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REASON

Free Minds and Free Markets™

October 1995

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By Glenn Garvin

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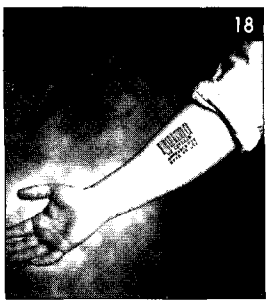

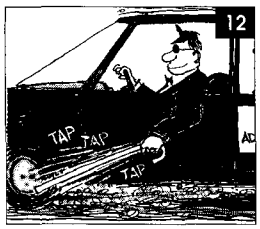

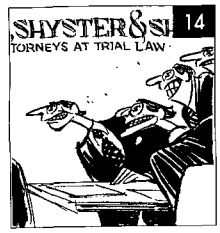

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Cover photograph by Holly Freedman

Reason (ISSN 0048-6906) is published monthly except combined August/September issue by the Reason Foundation, a nonprofit, tax-exempt organization, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034-6064. Second class postage paid at Los Angeles, CA, and additional mailing offices. **POSTMASTER:** Send address changes to Reason, P.O. Box 526, Mt. Morris, IL 61054.

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SUBSCRIPTIONS: $26 per year. Outside U.S. add $8/year surface, $38/year airmail. Address subscription correspondence to Reason, P.O. Box 526, Mt. Morris, IL 61054, 815-734-1102. For address change (allow six weeks), provide old address and new address, including zip code. **UNSOLICITED MANUSCRIPTS** returned only if accompanied by SASE. **INDEXED** in Readers' Guide to Periodical Literature, InfoTrac, Historical Abstracts, Political Science Abstracts, America: History and Life, Book Review Index, and P.A.I.S. Bulletin. Available on microfilm from University Microfilms International, 300 North Zeeb Rd., Dept. P.R., Ann Arbor, MI 48106. **Printed in the United States.**

Overcoming Merit

By Virginia I. Postrel

The illiberal agenda behind the "overclass" hype

JEWS GET INTO IVY LEAGUE SCHOOLS. So do women. So do Southerners from public high schools and second-generation Italian Americans educated by nuns.

They get jobs as doctors and lawyers, professors and journalists, engineers and business executives—at the top places, not just second-tier ghettos. Some strike it rich in software or designer food.

They marry each other. When they have kids, they send them to the best schools they can find.

This horrifying scenario—a combination of equal opportunity, lessening ethnic prejudice, and financial rewards for learning—is America's latest social problem.

You can read about it in *Newsweek*'s July 31 cover story, "The Overclass." Or, for a less celebrity-studded treatment, you can check out Mickey Kaus's *The End of Equality* (1992), Christopher Lasch's *The True and Only Heaven* (1991) and *The Revolt of the Elites* (1995), Richard Herrnstein and Charles Murray's *The Bell Curve* (1994), or Michael Lind's *The Next American Nation* (1995). I'm probably missing a few, but you get the idea: Everybody who's anybody is worried that nerds are making money.

These critics never say they're talking about nerds. If, like Lind, you want to denounce "oligarchy," you can't admit that you're really complaining that the smart kids who got beat up in middle school became successful adults: They went to colleges that valued their brains, found and married like-minded lovers, earn good salaries at satisfying jobs, and don't feel guilty about their lives. That's the basic complaint, however.

Writes Kaus: "It's one thing to have an unequal distribution of income. It's another to have that same distribution of income rigorously based on schooling and skills. In the latter situation, those with more money will be able to claim not just that they have more money, but that they have something else, knowledge, that makes them more valuable. The pay-for-skills trend lends all income differences, small and large, a nasty meritocratic bite."

This lament is weird and probably unprecedented. Usually intellectuals rail against markets for not valuing intellect—for not valuing *them*. The new complaint is that markets value brains too much. Hence Kaus's "nasty meritocratic bite."

Indeed, the anti-meritocracy protest has an odd self-referential quality. Why, oh why, you can almost hear the critics asking, must *New Republic* senior editors (a.k.a. Lind and Kaus) make so much money, know so many movers and shakers, eat out so often? Why must *Newsweek* writers be so intimately familiar with arugula and cappuccino?

IF A BUNCH OF BELTWAY WRITERS DECIDED to purge themselves of snobbery and start watching Fox, shopping at Wal-Mart, and eating Stouffer's macaroni and cheese instead of pesto, the world might indeed be better off. Certainly, self-styled populist Christopher Lasch could have used more exposure to the virtues of shopping malls—a peculiar locus of evil for a man who thought himself in touch with America. And, who knows, meeting people who never went to Harvard and never heard of *The Washington Monthly* might teach some social critics that snobbery is found in all classes, that a lot of people look down on *them*: In the words of a working-class *Hoboken Reporter* reader, "Seeing these weird people with sneakers and dresses every morning dashing for a crosstown bus just turns my stomach."

But the crusade against knowledge workers is not about reversing snobbery, least of all among the Washington wonkocracy. It's about thwarting the ambitions of talented people—and treating those people as tools for social engineers, not human beings with their own purposes. It's a particularly unattractive, illiberal manifestation of egalitarianism-at-all-costs.

For starters, the crusaders don't much care for learning, a traditional liberal virtue, since it's the source of inequality. Even the deadpan Herrnstein and Murray seem disappointed that so many smart kids are going to Harvard instead of staying on the farm or attending the local teachers college. *Newsweek* quotes disapprovingly a Los Angeles mother who worries that public schools will hold back her kids' education because of students who "don't have the same values in their home....If I'm working hard to push my child I want to make sure the other parents are, too." Only an evil elitist, insinuates the article, would want her children in a school that values academic excellence.

And, at its nasty little heart, the crusade against "the overclass" is also an attack on uppity women. Over the past generation, every elite university has gone co-ed, and, except for MIT and Caltech, they no longer have wildly lopsided enrollments. The workplace has changed, too. By 1993, women held 42 percent of executive, administrative, and managerial jobs, up from 32 percent in 1983.

Looking out at that world, a lot of male social critics have decided that there are just too many educated women; that we make way too much money; and that, worst of all, we steal all the professional

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Advertising Sales
The Townsend Group, Inc.
7514 Wisconsin Ave., #350
Bethesda, MD 20814
301-215-6710 Fax: 301-215-7704

Circulation Service
P.O. Box 526
Mt. Morris, IL 61054
1-800-998-8989

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Manuel S. Klausner, Tibor R. Machan, Robert W. Poole Jr.

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men from less-educated, lower-paid women—women who hold the jobs we'd have (until we got married) if evil meritocrats hadn't let us into the professions. Professional men are marrying women of their own income class, an "ominous trend," says Kaus: "Male lawyers and executives used to marry their secretaries. Doctors used to marry nurses." When you combine two professional salaries you get a much higher household income, and therefore more inequality, than in the good old days when working wives made a pittance.

The math is inarguable. Herrnstein and Murray recite similar figures. Lind adds the gripe that women and men no longer have separate spheres, that professional husbands and wives socialize as couples, that they're "joined like Siamese twins" and "feel mutually enslaved." Since he contradictorily condemns their marriages as "business alliance[s] between two emotionally independent professionals," one suspects that his real complaint is that he can't escape women, either in the workplace or at dinner parties. (A more charitable explanation is that he just doesn't like his friends' wives.)

But neither Lind, nor Herrnstein and Murray, nor Kaus will take their argument to its logical conclusion: that married women have no business in the professional world. Lasch was less squeamish. The late social critic saw in feminism no more than financial support for yuppie greed: "Female careerism provides the indispensable basis of their prosperous, glamorous, gaudy, sometimes indecently lavish way of life."

The anti-meritocracy crusade leads inevitably toward one particular policy prescription: universal conscription, a draft to the *n*th degree. If you can't keep ambitious, talented men and women out of good schools and good jobs, you can at least derail their careers and remind them that the government owns their lives. You can expropriate the years they'd spend in the library or the lab, at the gym or the school newspaper. You can make them tote a gun or clean bedpans instead of staying up late arguing politics or fooling with computers.

The point isn't to fill jobs that need doing; it's to confiscate human capital, and the precious years young people have to build it. "For social egalitarians, national service is valuable precisely because it would force Americans to pause in their disparate career trajectories and immerse themselves in a common, public enterprise," writes Kaus.

They may disagree on many issues, but on this every anti-meritocracy polemicist (except libertarian-leaning Charles Murray) concurs: America made a terrible mistake in 1973 when we ended the draft, when we told young people that their lives were their own. Lind calls the all-volunteer military "feudal," while Kaus waxes nostalgic for a draft because it "attempts to treat all citizens, rich and poor, with equal dignity." Or equal contempt. Equality, not dignity, is the point.

ELITES ARE NOTHING NEW. THE ONE THAT has this crop of social critics so agitated is simply much larger, much more open, and much more diverse than the old ones. Sure, as Murray and Herrnstein warn, "When people live in encapsulated worlds, it becomes difficult for them...to grasp the realities of worlds with which they have little experience but over which they also have great influence." And, sure, public debate might be improved if *The New Republic* occasionally hired someone who went to a state university or whose parents worked in textile mills. (I can supply references.)

But keeping smart kids out of prestigious schools and prestigious jobs—or stealing part of their lives for "national service"—won't solve the problem. Murray and Herrnstein's worry about encapsulated worlds is as true of the worlds of Harvard graduate Mickey Kaus and Harvard dropout Bill Gates as it is of *The New Republic*'s offices and the local Jiffy Lube. We can only know so much about other people's lives. That fact is an argument not against meritocracy but against social engineering—against the arrogant impulse to meddle that animates the attack on the "overclass."

Unruly Options

By Rick Henderson

Why arguments for unilateral free trade don't work

One month before the Clinton administration declared victory in the auto wars, U.S. Trade Representative Mickey Kantor had already opened another front in the perpetual campaign against Japan: the battle between film makers Kodak and Fuji. Kodak says Fuji and the Japanese government have colluded to keep Kodak out of the Japanese market—closing off access to wholesale distributors, offering discounts to retailers that offer only Fuji film, buying up film-processing facilities. *Business Week* called Kodak's case against Fuji "promising." "Kodak has a much clearer case than the U.S. automakers did," said *Time*. "Many trade pros think [Kodak's] case is far stronger," agreed *Newsweek*.

Fuji has countered with a credible case that, here in the United States, Kodak engages in many of the same "noncompetitive" practices it accuses Fuji of perpetrating in Japan. And as one attorney representing Fuji told me, "This is a classic example of two huge companies beating the shit out of each other in markets all over the world—to the benefit of consumers."

The attorney's argument is absolutely correct. And it has no chance of prevailing in the current political environment. The debate, after all, pits a corporation based in notoriously protectionist Japan against one headquartered in the more-or-less free-trading United States. With such visible players haggling over access to a common consumer product, the big picture—micromanaging film sales would hurt consumers—can become obscured.

That's why free traders might want to reconsider the argument, made most recently here in February ("No Deals," by Brian Doherty), that the United States should bypass such multilateral pacts as the North American Free Trade Agreement and the General Agreement on Tariffs and Trade and set trade policy unilaterally. After all, the Clinton administration is in fact bypassing GATT now—and the results haven't enhanced free trade. Negotiating ponderous, flawed treaties may not be the best way to open markets, but right now, it's the only game in town.

Since the days of Adam Smith, free traders have argued that an unimpeded flow of goods and services benefits the individual consumer because competitive pressures will force entrepreneurs to offer the best products at the lowest possible price. These "classical" arguments remain true. But in today's political marketplace, they aren't enough. Understanding trade policy requires a different economic calculus: public choice.

Public-choice pioneers James Buchanan and Gordon Tullock explained that when the people who benefit from a public policy are visible and organized—say, the stockholders and employees of Kodak—and those harmed by the policy are dispersed and disorganized—millions of film buyers—concentrated political interests will tend to trump the public good. Mickey Kantor's tenure as trade representative exemplifies this approach.

In a June 25 *Washington Times* op-ed, Kantor spelled out his goals for U.S.-Japan trade policy: "creat[ing] a balanced trade relationship with Japan." Kantor touted the "14 market-opening agreements [we have concluded with Japan] in areas including telecommunications, flat glass, insurance and medical technology." Kantor, who has called these agreements "WTO-plus," writes, "The stubborn refusal of Japanese negotiators to open their markets is the crux of the problem—not abstract concerns about free trade, or U.S. 'bullying,' or the intricacies of international trade rules." Kantor suggests that he plans to negotiate more narrowly targeted agreements, no doubt preceded by plenty of bluster and acrimony.

Unilateralists in both parties want to formulate trade policy, but the Republicans appear no more interested in reducing barriers than their Democratic counterparts. With remarkable insensitivity to car buyers and dealers, Newt Gingrich has suggested treating the stubborn Japanese as the French would: Require every Japanese car entering the United States to be inspected at a single port, say, Seattle, manned by only seven inspectors, half of whom are on vacation at any given time. Presidential front-runner Bob Dole is a legendary deal maker whose long-standing closeness to Dwayne Andreas, CEO of agribusiness giant Archer Daniels Midland, isn't encouraging. And if the populist right continues to demand concessions from Dole before giving him its support, what might Pat Buchanan, whose campaign is underwritten by archprotectionist textile magnate Roger Milliken, demand?

"Rules-based" trade deals like GATT and NAFTA are riddled with loopholes, take years to complete, and require armies of lawyers and bureaucrats to implement. But these pacts attempt to limit rogue actors like Kantor and Gingrich. They allow developing nations—who want to sell to world markets—to act as surrogates for the diffuse interests of American consumers. And the completion of one agreement establishes momentum for wider negotiations that can help more barriers fall.

Multilateral treaties may not offer the ideal path to free trade. But at least they reduce the influence of deal makers and shakedown artists.

Congratulations to our Reason Foundation colleagues Bill Eggers and John O'Leary, on the publication by The Free Press of their book *Revolution at the Roots*. We highly recommend the book to anyone interested in how mayors, governors, legislators, and private community groups are "making government smaller, better, and closer to home." Bill and John, who run the Reason Foundation's Privatization Center, have spent two years traveling the country, both advising and learning from these grassroots innovators. For more information, see page 51.

Western Wrangle

I was surprised to find that Nye County, Nevada, was "Twelve hundred miles to the west" of Denver ("Storm Over the Rockies," June). This would place it several hundred miles to the west of San Francisco—in the Pacific Ocean. Makes me wonder. Was this piece written before the elder Karl died, or was it channeled through this upstart namesake? I understand that distances aren't quite as important to those who have traveled into the great beyond. So which is it?

Lawrence M. Ludlow
San Diego, CA

In Karl Hess's Jr.'s dissertation, he is obviously attempting to foment violence and discontent because his "studies" are contradictory and misleading. However, they do prove the point that the West is ethically correct in opposing federal management.

From his own research, Mr. Hess says that the government is wasting large amounts of taxpayer money by subsidizing cattlemen and range maintenance. In the same breath, Mr. Hess says that the cattlemen are resisting federal intervention. Who is the bigger fool here: Mr. Hess for believing the federal government is subsidizing the cattlemen, or the cattlemen for wanting to throw the feds out and lose all of that free subsidy money?

You can't have it both ways, Mr. Hess. If we eliminate the feds, then, according to your research, the taxpayers will save in excess of $200 million a year and the cattlemen will suffer a loss. If you support continued federal management then you obviously support higher taxes for the general public.

Most of those tax dollars are spent on administering an ever-expanding bureaucracy and not on the citizens. If you are really affiliated with the Cato Institute, you should know this. So what's your real reason for creating this false premise and possibly instigating unnecessary violence, where peaceful solutions are available?

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Karl Hess cites my book, *Storm Over Rangelands*, as having considerable influence in the current Western land debate and the revived "sagebrush rebellion."

I believe Mr. Hess misses the main point underlying the controversy. The standard answer to concerns about our soaring national deficit used to be: "The national deficit is collateralized by our national assets." These national assets, it was explained, consisted primarily of vast acreages of "public" lands in the Western states and Alaska. These lands contained far more wealth in mineral, grazing, and timber resources than the total of our deficit. We were assured by those "Keynesian" economists that the people of the United States need not fear our national debts or deficits.

The Western federal rangelands, often referred to erroneously as "public" lands, grew out of economic necessity dictated by a huge Civil War debt. Westward expansion before the Civil War had followed the Jeffersonian concept of absolute privatization. Absolute title was conveyed from the government to individuals through the patent.

Jeffersonians correctly argued that a free society depended on the wealth of the nation being owned by the people as individuals and private associations of people. All wealth originates in the land.

The $2.8 billion Civil War debt owed primarily to European bankers and bondholders turned U.S. policy from land privatization to one of land retention. Instead of conveying all Western lands to the individuals who had settled on them, the national government withheld its underlying ownership and used that interest to collateralize our national debt.

The original acts of nationalization were intended to extinguish the private rights that settlers had acquired according to state law. The U.S. Supreme Court ruled in 1907 (*Kansas v. Colorado*) that the creation of national forests did not extinguish state sovereignty or the property created under state law, an opinion which has consistently been upheld by the high court since.

The real controversy underlying the current Western land debate is only a continuation of this century-plus-old conflict. If private individuals own property right interests in these unpatented federal lands, it raises the questions: Has Congress mortgaged something they didn't own? As long as those questions remain unsettled, our international creditors have just cause for concern. A 1984 report from the Department of Interior to the House Appropriations Committee elucidated this aspect of the problem: "The water right is the property of the permittee (rancher), over which the BLM [Bureau of Land Management] (federal government) exercises no more control than the sale of a box of soap in the marketplace" (parentheses mine).

The constant attack on Western ranchers, loggers, and miners is an attempt to extinguish private property rights without

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compensation. If all the private split-estate rights owned by resource producers in the West could be sewn back into one whole cloth of government ownership, the collateral value of these nationalized lands would be greatly enhanced. Where direct attempts to extinguish these property rights without compensation have been restrained by the courts, extinction through strangling regulations has succeeded to a large degree. Many Westerners have abandoned their property rights in federal land rather than bear the burden and expense of protracted court battles.

Attacking the citizens of the sparsely populated West makes sense politically. Recent attempts by government to gain control of property rights on the patented lands of the Eastern two-thirds of the country have raised many red flags. Politicians are acutely aware that the current property rights movement in the United States is largely a response to the taking of private property in the urban East through the Endangered Species Act, Clean Water Act, and the high-handed tactics of the Environmental Protection Agency and Corps of Engineers.

The taking of private lands in heavy population centers gains comparatively little at great political risk. On the other hand, there are only 28,000 ranchers in the West with grazing rights on federal lands. There is a comparable number of miners and loggers whose property rights are being taken by the regulatory policy of federal agencies and the environmental groups allied with them. At worst, the political risk in attacking the West involves throwing a quarter-million Westerners to the wolves. The gain in wealth for the central government with those rights extinguished is incalculable.

I agree with Mr. Hess that the current Sagebrush Rebellion misses the point. But not for the same reason Mr. Hess cites. The sagebrush rebels, like Mr. Hess, fail to understand that the Western land problem is far more a product of congressional budget committees and Federal Reserve policy than a conflict among Westerners.

Wayne Hage
Tonopah, NV

I agree with Karl Hess that privatization is the West's best long-term bet; however, ranchers are far from the only beneficiaries of public-lands largess. Of 720 million acres of public lands, over 150 million acres are set aside for environmentalists and recreationalists as National Park Services lands, wilderness areas, wilderness study areas, or National Recreation Areas. The federal government subsidizes public-land recreation industries to the tune of $1.6 billion per year, recouping less than 10 percent in user fees.

Federal agencies also want to maintain the existing system. The departments of Defense and Energy control 22 million acres of public land and intend to keep every acre. So, if ranching's "dead hand" is

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removed, will recreationalists be willing to see user fees quintuple? Will the Sierra Club give up having 10,000 square miles made wilderness at the stroke of a pen? Will DOD sacrifice its bombing ranges, and DOE cease cramming Yucca Mountain down Nevada's throat? If privatization means that ranchers are no longer privileged beings, then the other parties in the dispute must also accept parity.

Mark A. Bradley
Geologist, Placer Dome U.S. Inc.
Reno, NV

Karl Hess Jr. is wrong about cattle ranchers getting big government subsidies. Grazing rights are no more subsidies than was your great grandfather's homestead purchased from the government.

Mr. Hess paints an entirely false picture of the county government movement and the people involved. It is simply an attempt to use existing federal laws to protect citizens from the government and an effort to get government control out of D.C. and back to local (county) government where it belongs. Western landowners carry guns to protect themselves and their livestock from predators—seldom are these the bureaucratic variety.

Mr. Hess is wrong about dams being the primary cause of the demise of salmon. Try: Indian fishing, overfishing in the ocean by both domestic and foreign interests—much of it in violation of laws and treaties, and an incredible explosion of seal and sea lion populations due to the Marine Mammals Act.

If a few Western ranchers were involved in stopping the sale of Bureau of Land Management land, they were a misguided minority. The BLM should dispose of all of its land, then go out of business, as was originally intended.

J. Marvin Chastain
Port Angeles, WA

As someone born and raised in Wyoming too damned many years ago, I must admire Mr. Hess for his slick presentation. In 1895, he could have written the article in one sentence simply by describing us as "filthy, vicious, heathen savages." His elaborate craftsmanship serves the same purpose today—cover for a massive land and water grab.

Few of the urbanites Mr. Hess mentions are Westerners. Most are California refugees and escapees from the Northeast who arrived in such numbers and so quickly that they turned our small Rocky Mountain cities into the same gridlocked, smoggy, unlivable mess they had just left.

Mr. Hess won't acknowledge the bare bones and soul of this fight. Cowboys or not, Westerners dearly love their land empty. Empty as in hiking and fishing mountain streams for two weeks without seeing another person. Empty of RVs, of dirt bikers and federal busybodies, of New Agers and lawyers. Empty of environmentalists literally studying nature to death, and empty of the Prozac nation.

We are doomed, of course, just as were the Indians before us. You will get your land by hook or crook (mostly crook). Then you can build hundreds of ranchette communities complete with septic tanks, a golf course, malls, and landing strip. You will utterly destroy that which you came seeking. Look at Jackson Hole, Aspen, Woodland Park, Taos, West Yellowstone, and Santa Fe.

M. J. Reading
Grants, NM

Karl Hess Jr. notes that the West is now urbanized and the cities out-populate the rural areas. Yet he considers the water provided by federal dams to be subsidies only for the ranchers. Actually the dams provide the water, power, and recreation facilities that have allowed these cities to grow. Any water from federal dams used for grazing must be minimal.

Mr. Hess believes the BLM is concerned only with grazing issues and charges the entire burden of this cost to be a subsidy to ranchers. In fact, the BLM administers many different aspects of public lands including wildlife, the Endangered Species Act, access roads, wilderness areas, mineral leasing, mineral purchase, mining law, fire control, timber sales, land sales and exchange, and many other activities including recreation.

Mr. Hess makes no mention of the high-handed and overbearing activities of the BLM, acting on order from the Beltway 3,000 miles away. The blatant acts of closing off access to private lands (the problem in Nye County), the aggressive taking without compensation involved in the Wilderness Act and the Endangered Species Act, the moratorium on patenting land where all proofs have been completed, the attempt to preempt vested water rights, and the closing of roads crossing public lands (RS2477 roads) are a few of the items that come to mind.

Mr. Hess's observation that the economics of the "urban West" does not share common values with the rural West is true. But these urbanites are new migrants from cities and rarely step outside the metropolitan areas. They reflect the views of the areas from which they come, and do not know the issues involved.

Richard V. Wyman, Ph.D., P.E.
Boulder City, NV

Karl Hess Jr. responds: It never fails to amaze me the lengths that people will go to justify state power and, in particular, state power that benefits them. Many stockmen are proud men and women of unshakable integrity whose ethic is one of self-help and self-rule. To them I say hurrah and more power to you—all power over your own lives, in fact. Unfortunately, not all ranchers are so noble.

The posse from Esmeralda accuses me of inconsistency and suggests that I have a dark and sinister agenda. They say there is a contradiction in my logic—how could ranchers be taking subsidies and resisting the federal government at the same time? Easy. The West has been doing it for years. The line is this: Send the check but get out of my way. Maybe the Esmeralda desperadoes are the biggest fools of all to think that Nevada ranchers can be the biggest recipients of emergency feed relief in the West and still escape the long arm of Uncle Sam.

Wayne Hage's argument is a bit more sophisticated. I am pleased that he agrees on the misdirection of the Sagebrush Rebellion, and I wholeheartedly concur in

his displeasure with Congress. But a conspiracy flowing from bankers, international creditors, and the Federal Reserve? Wayne, one doesn't need a conspiracy theory to debunk government. One just needs common sense. The truth is that the West's undoing has nothing to do with collateralized debt. Its downfall is that it sold its soul for a handful of greenbacks and a promise of federal protection. The fact is that the American taxpayer has bankrolled the grazing rights you claim as private property over and over again through billions of dollars of range improvement investments. Taxpayers, not ranchers, are the real victims of government.

Now for a quick breath of fresh air. Yes, Mr. Bradley, you are right. Injustice is the middle name of the public-land West. I couldn't be in further agreement. I recently wrote and will write a second book soon on the National Park Service—and the fact that it is one of the cherry subsidies of the upper-middle class in America. Also, I never hold back on my green friends. Subsidies are subsidies, and even the very best of causes is no excuse for government. What gets me mad is that ranchers should know this.

Back to the battle. Marvin Chastain suggests that I am painting a false picture of the county government movement and the people involved with it. Although smaller is better in my book, there is no evidence that county government is superior to federal government. The best one can say is that it is easier to change—and easier to escape from. My gripe with the Western county movement is that its entire agenda is about making government more important in people's lives. Instead of looking to free markets and free minds for social order and political liberty, it hides under the skirt of the miniaturized leviathan of county managers and county commissioners.

Mr. Reading of my home state and Mr. Wyman of Nevada raise an interesting question: Who are the true Westerners? They cavalierly dismiss the urbanites and refugees from California and the East, though each and every one of those refugees paid fair market value for the land and homes they own. Messrs. Reading and Wyman also imply that environmentalists who pay hard cash for ranches and then use them for preservation are non-Westerners—invaders that rank with desert millipedes and scorpions. Well, what does this say about real Westerners among whom Messrs. Reading and Wyman count themselves? Real Westerners, of course, took their land by force from Native Americans, they taxed the rest of the nation for dams and highways, and then they fattened themselves on a cornucopia of federal cost-subsidies. Lest we forget, most real Westerners also came out West as refugees from the East—and some as refugees from the gold fields in California. I guess a real Westerner is someone who takes what he or she damn well pleases, and leaves the bill for the rest of us to pay. Yes, Mr. Reading and Mr. Wyman, the West you speak of is indeed doomed, but not for the reasons that destroyed the American Indian. Native Americans and their culture died proudly on the battlefield fighting federal intrusion; real Westerners, I fear, will simply perish in their mad stampede to see which one of them can get the most from the Great White Father in Washington.

This brings me to my final comment. Mr. Ludlow is absolutely correct. Twelve hundred miles puts Nye County smack in the ocean. I guess it was just wishful thinking—or maybe it was doing Nye County a favor. That far out in the Pacific, the county and its ranching rebels might be able to both establish their sovereignty and still get their entitlement checks—though this time through the U.S. State Department. And yes, distances I suppose are not so important to those in the great beyond. But as my father died and I looked out his hospital window to the dot that was Jefferson's Monticello on the hill above I could not help but think of the great distance that lay between Charlottesville and the West and the even greater distance that now separated the sage's dreams and sagebrush nightmare of a federalized West. I suppose I got confused by the latter.

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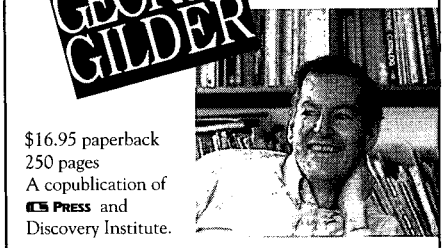

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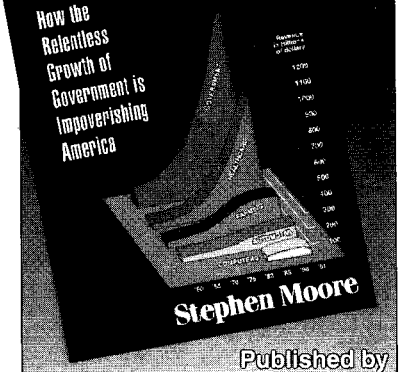

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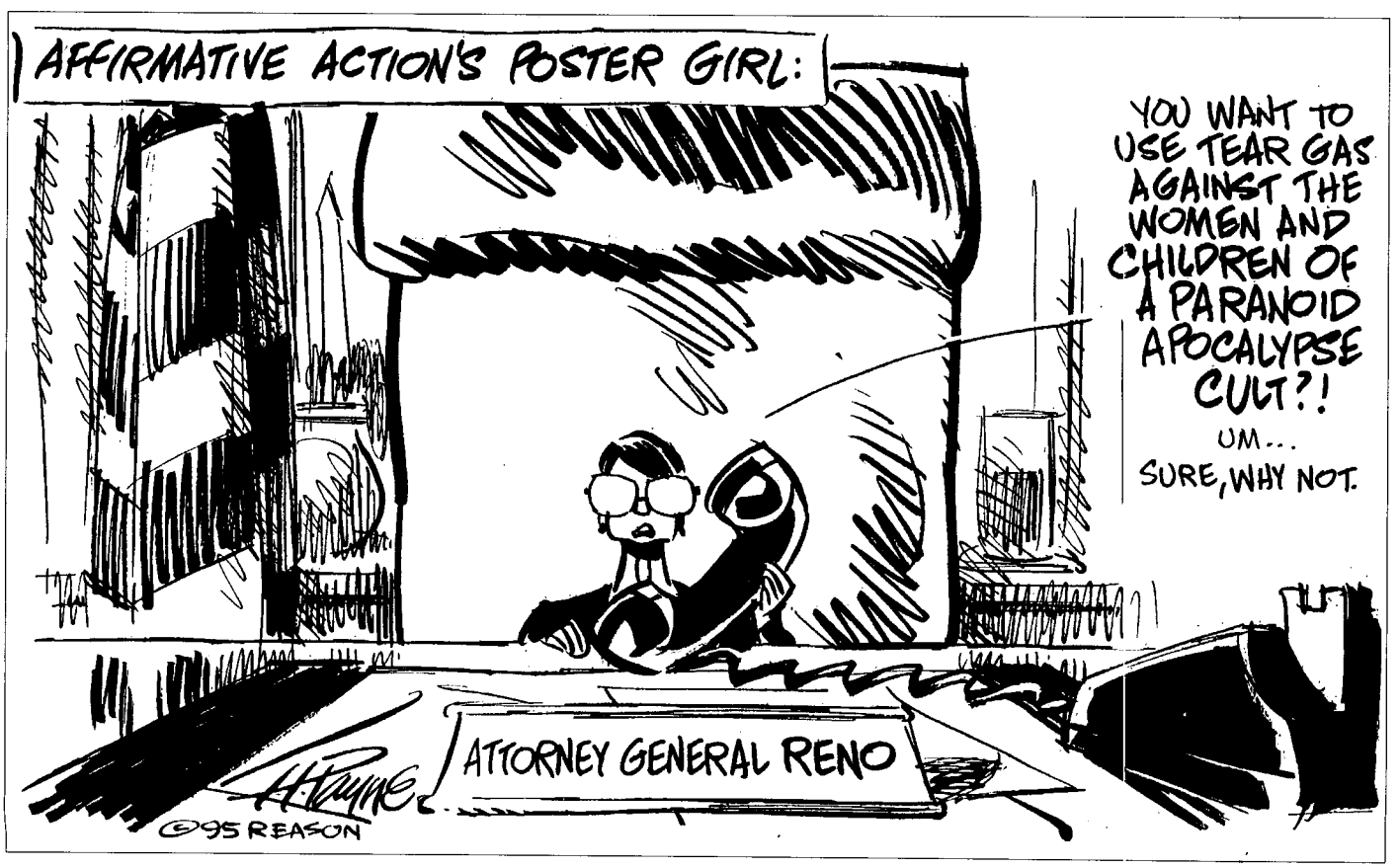
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HENRY PAYNE

SCOTT STANTIS

Project Life, an anti-abortion group, put up leaflets throughout Carolyn Sadler's Silver Spring, Maryland, neighborhood calling on her neighbors to urge her to end her "slaughter of children." Sadler was miffed, and more than a little perplexed. She's an anthropologist. Seems the anti-abortionists confused her with gynecologist Cynthia Sadler, who doesn't perform abortions anyway.

When Michael Moreci was stuck in traffic, he began revving his engine. Another driver, Sam Amirante, asked him to stop. Moreci, a corrections officer, replied, "I beat up guys like you for a living. Get out of the car and I'll leave you bloody in the street." Bad move. Amirante is a judge. Moreci pleaded guilty to assault, which covers verbal threats. He faces a $500 fine, but he still has his job with the Cook County, Illinois, sheriff's department.

Al Gore's mission is to reinvent government. He seems to have started with the office of the vice president. His staff is 48 percent larger than Dan Quayle's was.

On the cutting government front: *Roll Call* reports that the new dorm for Senate pages cost just under $8 million. That works out to $264,200 per bed. According to *Roll Call*, the median cost for a university dorm is just $22,600 per bed.

When Charles Hayden of Pittsburgh learned his son was in danger of failing seventh grade at Harrold Middle School, he took action. He tutored the 13-year-old two hours a day for 11 weeks. The boy finished with an 85.8 average. And the elder Hayden was arrested for taking his son out of study hall for the home teaching.

Washington, D.C., has big financial troubles, but that didn't stop it from assigning police officers to guard Mike Tyson when he came to town recently. Tyson, who may make $50 million for his next fight, is *not* in financial trouble. Said Police Captain Reggie Smith, "It is important for the city to make a positive impression on celebrities such as Tyson so they will visit the city again."

Lisa Herdahl of Ecru, Louisiana, has sued her children's school for broadcasting daily prayers over the school intercom. That doesn't sit well with House Speaker Newt Gingrich. He told a Roswell, Georgia, town meeting that this suit favors people with a minority viewpoint over the majority. Lord knows we wouldn't want individuals to have any rights the majority disapproves of.

In a story we've been following for some time, a court in Cairo, Egypt, has finally annulled the marriage of Nasr Abu Zeid and his wife. Neither Abu Zeid nor the little missus wanted a divorce. But fundamentalists convinced the court that Abu Zeid was a heretic and could not remain married to a Muslim woman.

In Pasadena, California, a private nurse applied for unemployment insurance. This prompted the state to send a letter to her former employer asking to verify the nurse's reason for leaving her job. The letter threatened action if the employer didn't respond within 10 days, but the employer disregarded the notice. As the nurse noted on her application, the reason she left was that the employer had died.

Robert Lee Brock is serving 23 years in a Virginia prison for breaking and entering and grand larceny. He has decided to sue the person responsible for his plight: himself. He wants $5 million in damages. Since he doesn't have the money, he wants the state to pay it for him.

Sari Mintz's 20-pound jungle cat mauled her 2-year-old niece. The cat had previously bitten three other people, so animal authorities wanted to test it for rabies. That meant the cat would have to be killed. So Mintz defied a court order and whisked the cat out of state. That means her niece will have to be treated for rabies as a precaution. But, hey, a few injections in the head and abdomen probably won't seem that bad after the 200 stitches the girl received from the cat's attack.

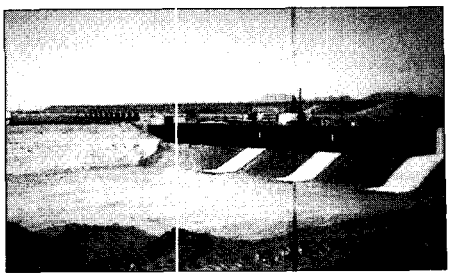
Finally, in Roanoke, Virginia, Warren Smith has sued his palm reader for giving him losing lottery numbers. He's asking for $3 million, the amount he would have won if he'd had the right numbers, plus punitive damages.

—Charles Oliver

Stateless Sewage

A desert city goes it alone.

By Brian J. Taylor



Apache Junction, Arizona's private wastewater facility site.

RESIDENTS OF APACHE JUNCTION, Arizona—a popular wintering spot whose population fluctuates seasonally between 18,000 and 55,000—have told the government to leave their sewage alone. In a move that industry observers say may spark a trend, a developer is building a fully private sewer system and wastewater treatment plant in the desert community located 40 miles west of Phoenix.

Typically, small communities rely on septic tanks, switching to publicly financed sewer systems as they expand. Residents usually pay for the new system with a bond measure and are then forced by law to connect to it at their own cost—often thousands of dollars.

But in Apache Junction, voters twice shot down bond measures to finance the construction of a modern wastewater facility. Sensing a demand nonetheless for such services, a Phoenix-based company, Interwest Management Inc., approached the Apache Junction city council and proposed building a sewer system without any taxpayer money. After receiving the council's approval, Interwest put together a private team that is financing, designing, building, and will operate the sewer district.

And unlike most publicly operated systems, when the $31 million, 100-acre facility is completed this October, no one will be forced to connect to it. Instead, the district will seek subscribers in much the same way a cable company does. Steven Brinkman, a senior vice president at Miserow Financial Inc., the project's underwriter, predicts 50 percent participation by the time the system begins operation. (Thirty percent of property owners had signed up with the district when the venture was announced last November.)

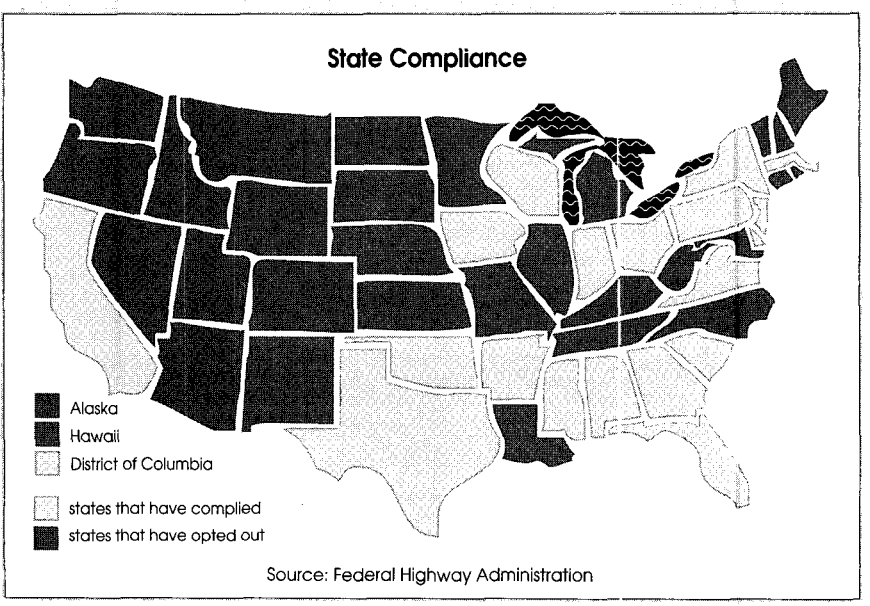
Grant Holland, director of analytical services at Interwest, says that ventures like Apache Junction help cash-strapped municipalities while giving entrepreneurs a variety of ways to earn profits. For example, the Apache Junction plant will offset initially low connection rates to the sewer system by operating a waste disposal site for septic haulers. Even though only 2 percent of wastewater facilities in the United States are privately operated, Holland believes that Apache Junction marks the start of a "long-term trend toward privatization" in water and wastewater management and ownership.

No Withdrawal Penalty

Most states have rejected "smoke a joint, lose your license."

By Jacob Sullum

In 1990, Congress approved an appropriations bill that threatened to withhold federal highway funds from states that do not suspend the driver's licenses of drug offenders, including people convicted of simple possession, for at least six months. But the law included an escape clause: A state could avoid the requirement if its legislature and governor explicitly agreed to opt out. As of late March, 19 states and the District of Columbia had complied with the federal mandate and 31 had opted out. California adopted a license-suspension law that expires in December, and a bill to extend it (backed by Gov. Pete Wilson) was defeated. The only alternative seemed to be an opt-out resolution sponsored by state Sen. Quentin Kopp. The legislature unanimously approved a similar resolution in 1992, but Wilson vetoed it. The governor, who once spoke favorably of marijuana decriminalization, does not want to seem soft on drugs. But he can always sign the resolution and call it a strike against unfunded mandates.



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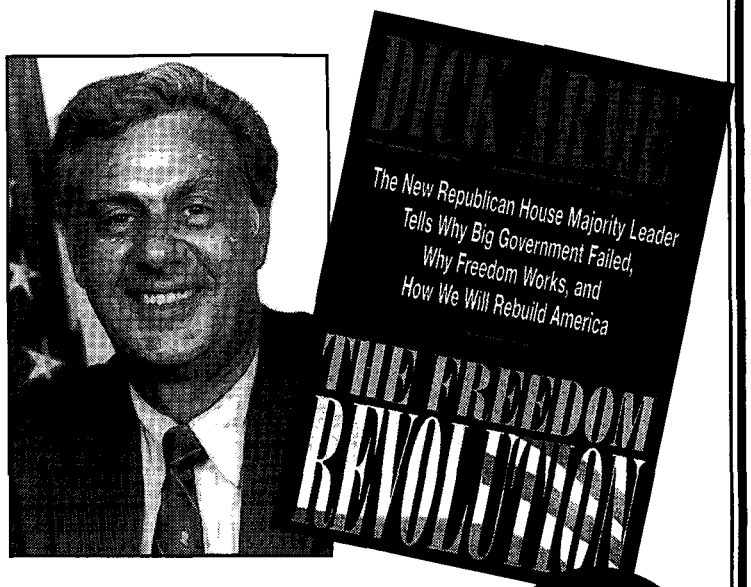
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Balance Sheet

By Rick Henderson

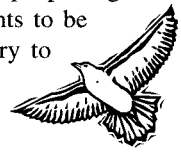
Assets

Parental Control. The campaign to censor the Internet hits a snag in the House. By a vote of 420 to 4, it passes a telecom bill amendment sponsored by Reps. Chris Cox (R-Calif.) and Ron Wyden (D-Ore.) that would prohibit the Federal Communications Commission from regulating the Internet. The amendment would also ban civil lawsuits against on-line services that provide software to screen out racy language and pictures.

Contract Job. Want to be your own boss? First you must pass a murky 20-part Internal Revenue Service test to determine if you're an employee or an independent contractor. The IRS makes some 40 million queries about these regulations to befuddled businesses and individuals each year. Rep. Jon Christensen (R-Nebr.) and 100 co-sponsors offer HR 1972, a bill that makes anyone an independent contractor who meets three criteria: You must state, in writing, that you'll pay your own taxes; you have to invest in your own training and equipment; and you must offer your services to several employers or have a free-standing office.

Plan Obsolescence. Congressional appropriators defund three relics of Beltway micromanagement: Sematech, the government-backed computer-chip designer; the Advanced Technology Program, which makes taxpayers subsidize high-tech commercial ventures; and AmeriCorps, the national-service program that costs taxpayers $30,000 a year for every college graduate who "volunteers" to play cop or candy striper.

Earth Tones. At the peak of his state's recession, Pete Wilson promised, "California will not cut back state environmental protection" no matter how much people beg for relief. The recession still hasn't ended. But now that Wilson wants to be president, he's become a born-again deregulator. Wilson may try to overturn the state's electric-car mandate. And he wants to rein in California's Endangered Species Act by requiring compensation for landowners whose property houses threatened critters and forcing the legislature to vote on any new listing of birds or fish.



Liabilities

Pane-ful Enforcement. Top antitrust enforcer Anne Bingaman's crusade against commerce accelerates. The Justice Department considers legal action against Windows 95 *before Microsoft ships the software*—the first time the feds have accused a company of monopolizing the marketplace with a product that doesn't exist. Talk about vaporware....

Buck Stopper. Conservative commentators from Robert Novak to Paul Weyrich attribute Mata Hari–like powers to Sheila Burke, Bob Dole's chief of staff. Right-wingers blame Burke for Dole's cave-in on welfare reform and his zeal to "fix" health care. Get a grip, guys. Burke may be the most powerful and unaccountable female public official since Hillary Clinton. But put the blame where it belongs—with the guy who hired her.

Oil Slick. The most enthusiastic congressional supporters of consumption taxes hail from Texas and Louisiana. Wonder why? Ways and Means Committee Chairman Bill Archer (R-Tex.) says his consumption tax would boost American competitiveness because it's "border refundable." Can you say *hidden oil-import fee*?

Cold Cash. First cocaine, then cigarettes, now freon? The impending phase-out of CFCs has hiked freon's retail price from $1.00 per pound to $25 per pound. Not surprisingly, reports *Washington Times* automotive writer Eric Peters, a black market in freon is flourishing. The Departments of State and Justice, the Customs Department, IRS, and EPA have formed a task force to crack down on freon smugglers, one of whom was caught in Florida with 3,000 tons of the refrigerant.

Take No More

The growth in state-level takings laws

By Brian J. Taylor

In March, the House of Representatives passed a bill that would compensate landowners when federal land-and-water-management programs such as the Endangered Species Act and the Clean Water Act lower property values by more than 20 percent. The Senate is considering—and, according to most Hill watchers, is likely to pass—legislation that will kick in when value is decreased by 30 percent. The Senate measure would apply to all federal land-use regulations.

As Congress slowly marches toward a federal takings law, the states have been moving forward at a faster clip. Since the state of Washington passed the first takings bill in 1991, 17 other states have followed suit. Twelve of those states—from Arizona to Wyoming—passed the bills in the first half of 1995 alone.

Takings laws are usually classified as either assessment or compensation measures. Assessment legislation is more prevalent, and typically requires an agency to ensure that its regulations will not lower property values to the level of a taking. Compensation bills offer property owners remuneration for lost value once a certain threshold is crossed (usually when property value is diminished by 20 percent to 50 percent).

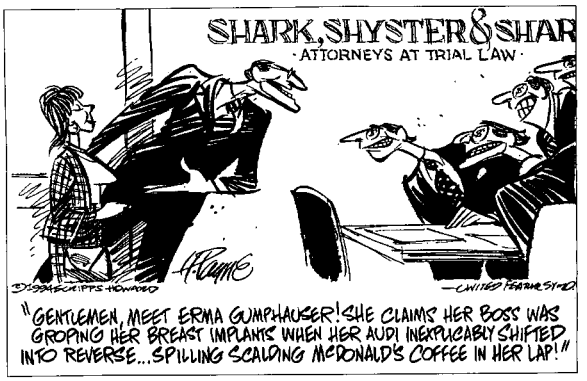
Takings legislation has been initiated and supported by groups ranging from small local property rights organizations to the National Federation of Independent Businesses, says Lisa Jaeger, deputy counsel at Defenders of Property Rights, a Washington, D.C.-based public interest legal foundation.

"The states have always led the way in advancing property rights legislation because the courts have abdicated their responsibility by not safeguarding constitutionally protected property rights," says Jaeger. ®

Tort Reform

Loser-pays is winning at the state level

By Brian J. Taylor


SHARK, SHYSTER & SHAR
ATTORNEYS AT TRIAL LAW
"GENTLEMEN, MEET ERMA GUMPHAUSER! SHE CLAIMS HER BOSS WAS GROPING HER BREAST IMPLANTS WHEN HER AUDI INEXPLICABLY SHIFTED INTO REVERSE... SPILLING SCALDING MCDONALD'S COFFEE IN HER LAP!"

HENRY PAYNE

ALTHOUGH CONGRESS FAILED TO pass loser-pays tort reform designed to reduce the number of frivolous lawsuits, similar legislation is going ahead at the state level. Oklahoma passed a loser-pays measure in late May, and Oregon followed suit in July. Delaware and New Jersey are considering similar legislation.

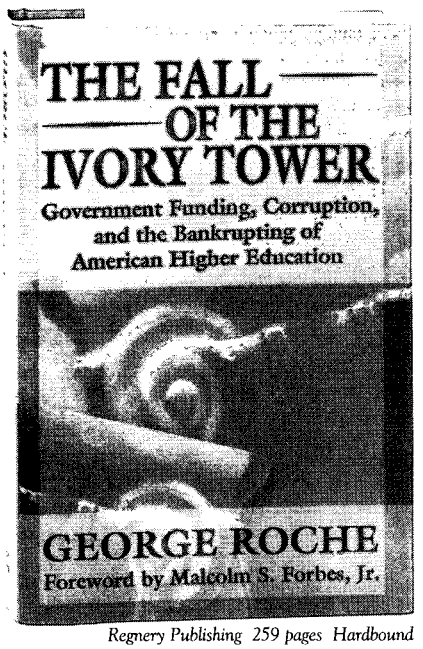
The Oregon bill—which makes summary judgment easier and requires loser-pays in the instance of litigant misconduct—will become law in September. (See "Civil Suits," June.)

The Oklahoma law makes the party who refuses a reasonable settlement liable for the court costs and attorney fees of the prevailing side in a civil case. It also caps punitive damages by limiting awards to $100,000 when the defendant is found guilty of acting with reckless disregard and $500,000 when acting with malice.

Although Oklahoma is not the first state to pass loser-pays—Alaska has had the system for decades—the state's geographic centrality and relatively high level of litigation make it the first significant loser-pays system in America, says Walter Olson, author of *The Litigation Explosion* and a proponent of loser-pays. The Oregon law, while not as wide in scope as Oklahoma's, is also an important experiment, says Olson.

The Delaware bill would award the prevailing party in all civil actions reasonable attorney fees, while the New Jersey bill would do the same for suits declared frivolous by the court. Sponsors of the Delaware and New Jersey legislation say those bills will come up for votes in 1996.

The loser-pays momentum is likely to continue. For instance, the Alliance to Revitalize California—a consortium of consumer and business leaders—is campaigning to place an initiative for a loser-pays system in securities class-action suits on the state ballot there next March. ◆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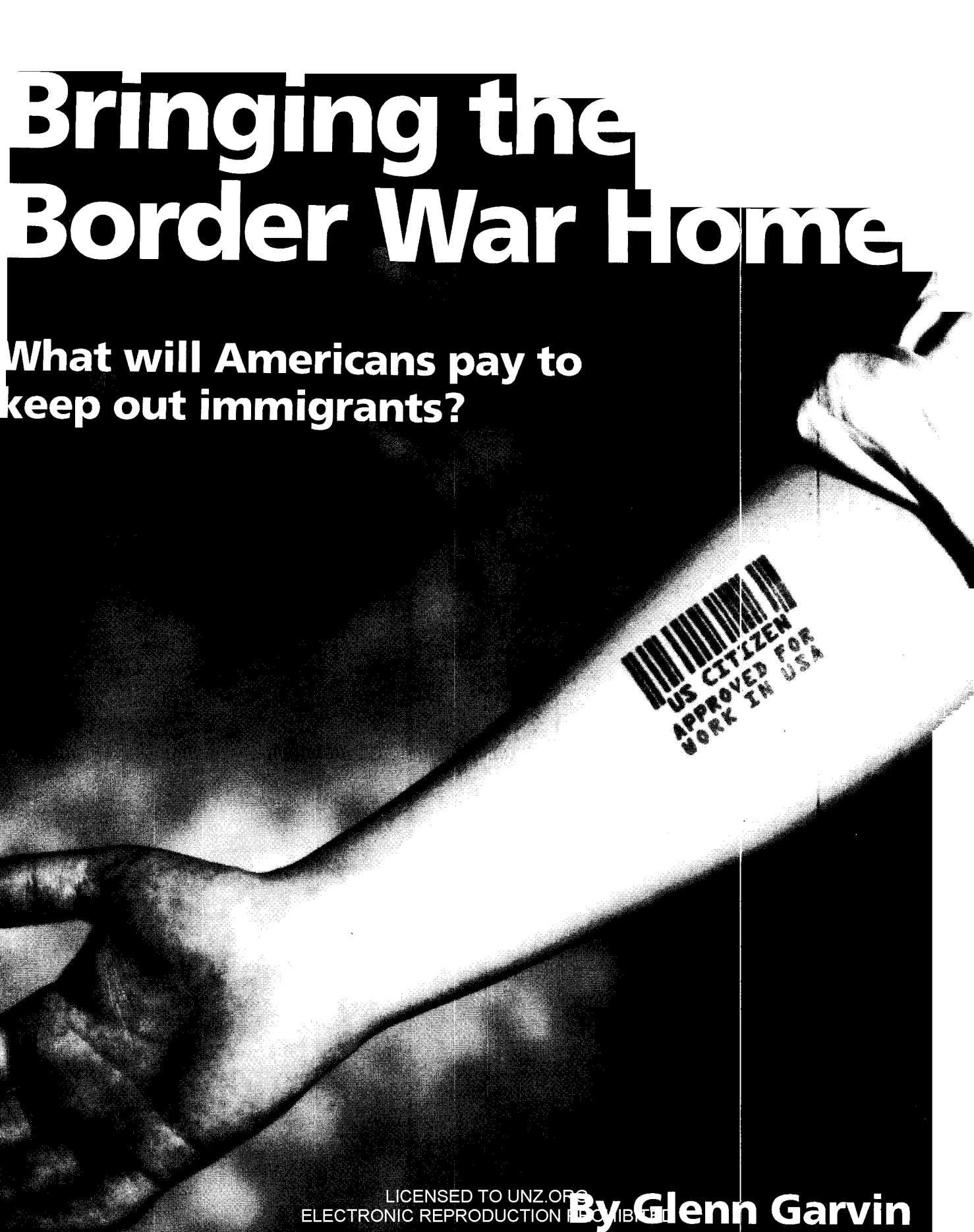
Bringing the Border War Home

What will Americans pay to keep out immigrants?



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By Glenn Garvin

In the national din over immigration, Lizbet Martinez's story barely rates a whisper. She's just a little girl, born in Cuba in 1983. Her mother was a dentist, her father a truck driver, and Lizbet was their first child. Like all new parents, Danne and Jorge Martinez found that having a child changed their lives in ways they couldn't have imagined before she was born. Sleeping through the night was a thing of the past. And a simple trip to the market suddenly required so much planning and preparation that it seemed like a military operation.

Yet it was only when Lizbet was old enough to go to school that the most profound change of all became obvious. Like many—probably most—Cubans, Lizbet's parents led double lives. At work, they dutifully chanted the praises of the Cuban Revolution and its all-powerful leader, Fidel Castro. But at home, behind closed doors, they cursed him for turning Cuba into an economic wasteland and political dead end, a country without a future.

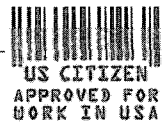
That was fine when it was just the two of them. But now Lizbet would be leaving the house each day to sit in class with a teacher who owed his job to his membership in Cuba's Communist Party. What happened if the little girl repeated something she had heard at home? How long would it be until her parents were fired, or their ration cards were confiscated, or their house was seized, or they were summoned to the Ministry of the Interior for questioning?

So Jorge Martinez decided it was time for his daughter to hear the Cuban version of the birds and the bees. He sat down with her one afternoon a few days before she was to start the first grade. "You must never, ever say anything against Castro at school," he warned Lizbet, feeling a mixture of sadness and relief at the grave expression on her 6-year-old face. "And if the teacher seems to contradict something you've heard at home, just keep quiet. When you have questions, ask your mother or me—no one else." Most parents try to teach their children that lying is wrong. The Martinezes told their daughter that lies were the very foundations of their lives.

It was a difficult, dangerous thing that they were trying, but it seemed to work—in part because in Lizbet the Martinezes had been blessed with an uncommonly intelligent and poised child. Not only did she manage to stay out of trouble at school, but she flourished. Her grades were always the best, and her talent with the violin seemed almost supernatural. Word of her musical skill spread through Havana and even reached the ears of the Communist Party's arts commissars. Lizbet was made first violinist with the Havana youth symphony, even though it is mostly reserved for the children of high party officials.

Still, the Martinezes were unhappy. "We're corrupting her, the same way everything in Cuba is corrupt," Danne Martinez said to her husband. "Everyone here says one thing and does another, says one thing and thinks another. It's a sickness. And we're infecting our daughter."

HOLLY FREEDMAN



INS agents raided Laurie's restaurant in the rural Northeast, just as the lunch rush was beginning. "They acted like a bunch of Gestapo people, standing at the doors like that. In a little town like this it doesn't take much to catch everyone's attention, and I felt like I was being branded a criminal. Every time I asked them what my rights were, they just ignored me." The INS arrested five Mexican employees who'd shown Laurie fake ID. Then they went through the files on her American-born workers, fining her $275 for every minor error—a total of $8,000.

So they decided to leave. Because Danne Martinez was a dentist, they would never get permission for one of the handful of legal visas to emigrate that the Cuban government hands out each year, mostly to the old or lame. Instead, Jorge Martinez began keeping his eye out for inner tubes at the trucking depot, slipping away with one whenever he could. And the Martinezes made sure that their daughter knew how to swim almost as well as she could play the violin. They waited, watching for their chance.

It came in August 1994. For reasons known only to himself, Fidel Castro relaxed the security patrols along the island's beaches. Word spread quickly on what the Cubans call *radio-bemba*, lip radio: If you want to try to get out on a raft, no one will stop you. Dozens, then hundreds, of people flung themselves into the Caribbean on flimsy rafts, praying for a strong wind toward Florida.

"It's time," Jorge Martinez said to his wife. "It might be 10 years before we get another chance. And that would be too late for Lizbet."

Jorge and Danne thought no risk was too high to exchange the manacles of Cuba for the freedom of the United States. But they didn't believe they had the right to bet Lizbet's life without her consent. So that afternoon there was no violin practice. The family gathered around the kitchen table, and once again Jorge told his daughter the facts of life: On one hand, the high seas, the voracious sharks, the pitiless sun; on the other, a chance to go to a school where she could say anything she wanted.

When they were finished, 11-year-old Lizbet looked steadily at her parents and said: "I have been praying for this day." She went to her room and returned a moment later with her asthma inhaler, a Bible, and her violin. "I'm ready," she declared.

They left that night, on a fragile raft made of nine inner tubes, a few pieces of plywood, and a tarp, 18 ½ feet long and 8 feet wide. Thirteen people crowded aboard as they pushed off a beach outside Havana. With eight oars, they paddled steadily for what

they hoped was north, although within a few hours they were hopelessly confused about directions.

They were out there six days, huddling under the tarp to shield themselves from the maddening sun, clinging desperately to the raft as summer storms sent waves crashing overhead. Always they were scanning the horizon, hoping for the first flickering glimpse of the Florida coastline.

It was a couple of hours before dawn on August 22 when they saw the lights of the ship. "Too big to be the Cuban navy!" Jorge Martinez exclaimed, and they desperately signalled with a flashlight. In a few minutes, a small motorboat was lowered from the ship and buzzed toward them. Its deck lights illuminated a red, white, and blue flag fluttering in the breeze. Moments later the refugees were clambering aboard.

It took just a few minutes to make their way back to the big U.S. Coast Guard ship. As they stepped onto the deck, they were greeted by a smiling officer in gold braid. Lizbet couldn't understand the words he spoke, but they sounded good all the same. In Cuba, men in uniform were to be feared, but this man had rescued her family from the lonely sea. She wished she could speak English, even just a little bit, to thank him. Suddenly she had an idea. Handing her Bible to her mother, she popped open the latches on her violin case. And putting the instrument to her shoulder, she played a song that she had been practicing—softly, in a closed room, where no one could hear—for the past two years. She played "The Star Spangled Banner."

The captain's face crumpled in tears. All around the deck, uniformed Americans were crying. When she finished, they clapped and cheered, 50 men making a noise like 500. The captain sent for a crewman who spoke Spanish, and when he arrived, the captain spoke just one short sentence. "He says you have touched his heart," the sailor translated to Lizbet. The captain smiled and squeezed her hand.

Then he took her to a prison camp.

But—who cares, really, about Lizbet Martinez? It's not like she has any rights. She's just another foreign kid, just another one of those "weird aliens with dubious habits" coming here probably to go on welfare or mug old ladies, as journalist and racial scientist Peter Brimelow is constantly warning us. (And Brimelow should know; he's a Brit, married to a Canadian.) Or, worse yet, one of those dangerous multiculturalist agents his *Firing Line* ally Arianna Huffington has alerted us to, bent on destroying the English language and abolishing Christmas in favor of Kwanzaa. (And Huffington should know; she's a Greek who came here from London.)

So let's not waste a lot of tears over Lizbet Martinez or any of her little Third World friends who've been jailed at Guantanamo. If they've suffered, it's been in a good cause—the preservation of an endangered species, Bill Clinton's electoral votes. Let's not freak out over the Romanian stowaways held in leg irons in New Jersey, or the Chinese women locked up for 14 months in a tiny hotel room at the Miami airport. We just don't have the time or the emotional capital to spend worrying about their freedom.

Because we have to worry about ours.

In the rush to repair all the supposed damage to our economy and culture done by those pernicious Accented People, the Brimelows and Huffingtons want us to declare war on immigration. And to fight it, they're asking for some heavy new legal weaponry.

Hundreds of millions of dollars to build a McNamara Line along the border with Mexico? Pocket change. The ability to seize businesses, and jail the owners, that employ the enemy? It's only fair. Forcing every American to carry a national ID card and submit to the whims of a computerized Federal Work Permit office? True patriots will be proud to do it.

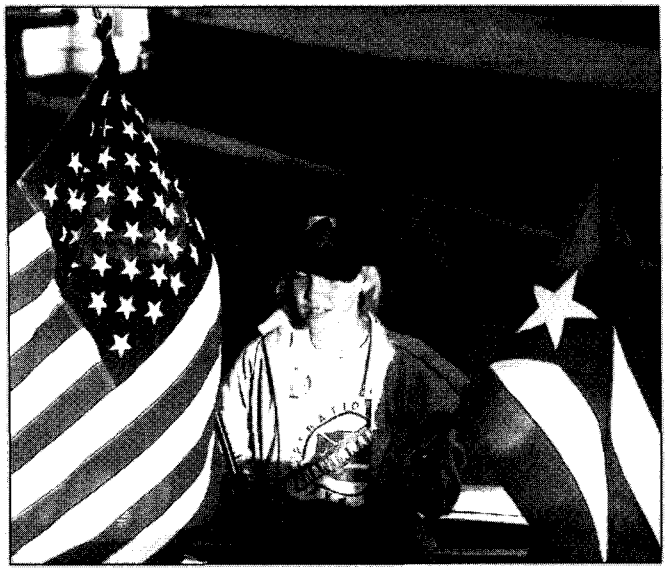
And if some civilians get caught in the crossfire, well, war is hell. Remember what they used to say in Vietnam: Sometimes you've got to destroy the village in order to save it.

Does the military analogy seem strained? It shouldn't. Sen. Barbara Boxer of California advocates mobilizing National Guard troops and stationing them along the border with Mexico. And although that hasn't happened yet, the Border Patrol *has* been quietly militarizing the border. The canyons south of San Diego now bristle with high-tech surveillance devices supplied from the Pentagon, and patrolmen zip over the craggy terrain in surplus military vehicles. Even the metal fence that snakes 23 miles from the Pacific Ocean to Otay Mountain came out of a Pentagon storehouse: It's made of old portable landing strips that were used in Vietnam.

If that has any infelicitous connotations, they're lost on the Border Patrol agents themselves. "This stuff is great, and I can't tell you how happy we are to have it," says Bryant Brazley, a seven-year patrol veteran, as he stands on a cliff overlooking the aptly named Smuggler's Canyon. "We were trying to plug this border with chewing gum, hammers, nails, and bailing wire."

Not any more. Along with the new 12-foot-tall fence, there's a 4.5-mile strip of high-intensity stadium lights, backed in Kevlar to keep them from being shot out, their poles encased in metal girders to protect them from arsonists. There are half a dozen night vision scopes, $150,000 apiece, with more on the way. There are 222 new vehicles and two high-speed boats. There's an elaborate network of ground sensors to detect movement along the border; 300 encrypted radios to keep the patrol's transmissions secret from prying ears; a computerized fingerprint identification system that can tell if a captured immigrant has been stopped before. Not to mention 200 new agents.

This is all part of what the Border Patrol calls Operation Gatekeeper, one of three high-intensity efforts to shut down sectors of the Mexican border. (The others are Operation Hold-The-Line in El Paso and Operation Safeguard south of Tucson.) How much it all costs is difficult to ferret out of Immigration and Naturalization Service budget documents, but it isn't cheap: Construction costs in the San Diego area alone will amount to $22 million during this fiscal year. Overall, the INS enforcement budget has grown from $933 million in fiscal 1993 to an expected $1.7 billion in fiscal 1996. What else is hidden in the Pentagon's budget, or the Justice Department's (Janet Reno is adding 65 more federal prosecutors to her staff, just to go after immigrant smugglers



Young Lizbet Martinez plays violin (above) and waves the flags of her lands of birth—and choice. Measures to make life tougher for the likes of her would make the United States more like Cuba.

LEFT: MIAMI HERALD/PAUL RUBIERA; RIGHT: MIAMI HERALD/CARL JUSTE

on the Mexican border), is anyone's guess.

There's no question that Operation Gatekeeper has salved the pride of harried Border Patrol agents like Brazley. "The Mexicans used to mass in a soccer field near the Chula Vista station, just east of San Ysidro," he recalls. "And then at dusk, they'd rush us. Hundreds of them, and we could catch maybe two or three. What kind of offended our dignity was that the soccer field itself was on the U.S. side of the border. So sometimes a couple of agents would drive over there as they were massing and tell them to at least do that on the Mexican side. And they'd just grab the vehicle and start rocking it back and forth, threatening to tip it over. You had to be a tough guy or gal to work the border here then."

The infamous soccer field was one of the first casualties of Operation Gatekeeper, annihilated by National Guard bulldozers. But aside from preserving Border Patrol dignity, it's hard to say just what we've gotten for all the money. During the first seven months of Operation Gatekeeper, apprehensions of illegal immigrants around San Diego were up 6.2 percent, to 331,000. Does that really means 19,000 Mexicans were stopped from entering the United States? Or does it mean that 9,500 Mexicans were stopped twice before eluding the Border Patrol on their third try? Consult your Ouija board for an answer.

But we do know a couple of things for sure. One is that a few weeks into Operation Gatekeeper there was an explosive growth in illegal immigrant traffic in Arizona. Even without any additional enforcement measures, Border Patrol apprehensions around Tucson jumped 50 percent. (That's why Operation Safeguard was set up in Arizona on January 1.) The immigrant flow is like a balloon; squeeze it in one place and it pops up in another.

We also know this: Despite America's national angst over the Mexican border, less than half of what most people think of as illegal aliens actually use it to enter the United States. Though the INS likes to terrorize the folks in Des Moines by speaking darkly of a million illegal border crossings a year, when pressed, officials will admit that most of those people eat a hamburger in San Diego or visit a shopping mall in El Paso and are back home by nightfall. (When Operation Hold-The-Line started in September 1993, the loudest complaints came not from Mexican nationalists or American civil libertarians, but from El Paso merchants. The drop in their sales was dramatic.)

The most widely accepted estimate of illegal immigrants who come to stay is about 300,000 a year. Roughly half of those enter the United States on legal visas—as tourists or students, for instance—and then stay. Another 5,000 or so cross through Canada, sneak into Puerto Rico, or enter via sea. So even if we gave the Border Patrol the billions of dollars it would cost to extend Operation Gatekeeper across every inch of the 2,000-mile Mexican border, and even if it succeeded in stopping 100 percent of the immigrants, at least 155,000 illegal aliens a year would still be getting into the United States.

And yet another thing we know: The border controls wouldn't be 100 percent effective. "It's enormously hard to control a border," observes Annelise Anderson, a former associate director of the Office for Management and Budget. Now a scholar at the Hoover Institution, she has studied immigration extensively. "The classic case is East Germany. They fortified their border with dogs, barbed wire, search lights, land mines, and really mean guards who shot to kill.

"And people came anyway. They dug holes and tunnels and smuggled themselves in vehicles. They kept coming, and lots and lots of them succeeded....People who want to cross borders are very determined. It's really hard to shut them off."

This is not exactly news to Border Patrol agents, many of whom have mixed feelings about arresting people whose only crime is wanting a job. Though they dutifully swear to the effectiveness of Operation Gatekeeper, they do not pretend that they can close down the entire Mexican border. "We know we're not the solution," says Brazley. "We know the answer doesn't lie with the Border Patrol."

As he speaks, Brazley is standing in Goat Canyon, another of

the border's busy spots. Mexico's Highway 1 is on the other side. All day long buses from the country's interior stop there, discharging passengers. They use a pedestrian overpass to cross the highway and then scramble down a dirt embankment to a clearing just a few hundred feet from the border. There they sit and wait for the cover of dusk before slipping into the United States.

While they wait, they can buy tacos, chimichangas, coffee, and soft drinks from a woman who sets up a vending stand each day. Originally she arrived on the bus herself, but business is so good that she's been able to buy a truck. And often she has to bring her two children to help with all the cooking. Eleven months into Operation Gatekeeper, she's still there.

Well, then, if we can't fight these invaders on the beaches, how about in the fields and in the streets? If they're coming here for jobs, let's go after the people who are giving them jobs. The Immigration Reform and Control Act of 1986 already makes it illegal to employ undocumented aliens to the tune of $10,000 apiece, but that's kind of a pipsqueak penalty for what amounts to lending aid and comfort to the enemy. What we need is a law with *fangs*—say, the right to seize the assets of businesses that employ illegal immigrants.

In February, after an immigration war council with Janet Reno, Labor Secretary Robert Reich, INS Commissioner Doris Meissner, and several Border Patrol officials, President Clinton hinted that he'll eventually ask Congress for an asset-seizure law. He made it sound quite reasonable: "If we turn off the employment stream for illegal workers, far, far fewer of them will risk the difficult journey here."

But why wait? Isn't this an *emergency*? It's a time for men of action like California's Joe Baca, a Democratic state assemblyman from San Bernardino. He introduced a bill that would not only seize the assets of businesses that employ illegal immigrants, but put their owners in prison for up to four years.

"We wanted to address illegal immigration, and do it in a way that was not an attack on the immigrants themselves, the way Proposition 187 is," explains one of Baca's aides, Eloy Garcia. (Garcia's statement, incidentally, shows why liberals who purport to be defending immigrants are actually often their worst enemies. Taking jobs away from immigrants is not an attack; taking their welfare benefits, as Proposition 187 seeks to do, is. Surely Peter Brimelow couldn't have expressed it more artfully himself.)

What Garcia means is, his boss is willing to attack *the rest of us*. Because "employer" doesn't just refer to the sweaty garment factories along Skid Row in Los Angeles, or the garlic fields around Gilroy. Kathleen Beasley, a California state government policy analyst, recognized the peril instantly when she heard about the bill.

"The guy who mows my lawn—I've never asked to see that guy's credentials. It never occurred to me to ask," she muses. "But I do pay him $65 a month. He doesn't speak very good English, and now that I'm thinking about it, maybe he wasn't born in the United States. Should I ask?

"I've never asked my accountant, either, where he's from. As it happens, I'm pretty sure he's an American. But suppose I had just used the yellow pages to find an accountant, and the one who answered the phone spoke with a heavy accent. Should I ask to see his driver's license and his Social Security card? If this bill passes, would I be risking going to jail and having my home and all my money seized?"

Could be. In fact, Beasley's best defense against prison time would probably be that she's unlikely ever to repeat the crime, seeing as how she would no longer have a bank account or a house. Because state regulatory authorities react to a whiff of cash much the way piranha fish do to the taste of blood: They sink their teeth into the nearest living flesh and strip it to the bone. One reason, of course, is that it's lucrative, a way for agencies to expand their budgets without a lot of whining from spoil-sport taxpayers. Another is that it's easy.

Because asset forfeitures are defined as civil, not criminal, penalties, the authorities can brush aside all that troublesome innocent-until-proven-guilty stuff. Seizures could be made on the mere *suspicion* that you hired Rosarita to tend your kids without checking her work papers; then, in court, it will be your job to prove that you did. Of course, Rosarita might have been deported back to El Salvador by then and unable to corroborate your story that she showed a fake Social Security card. Don't expect the judge to be understanding. In a 1987 Missouri case that's all too typical of the genre, a woman's car was seized after her boyfriend drove it to the site of a cocaine deal. The judge agreed that the woman "was unaware of and uninvolved in" the drug buy, but he said the cops could keep the car anyway. Playing under those rules, it's no wonder that there have been hundreds of thousands of seizures netting more than $3.5 billion under federal law alone over the past 10 years.

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To say that the California business community is dismayed about the Baca bill is an understatement of epic proportions. "It's cockamamie," says Ruben Jauregui, the managing partner of a Los Angeles CPA firm. "It's against everything this country stands for."

About 20 people work in Jauregui's office, which he calls "a little United Nations." His staff includes natives of China, Taiwan, Hong Kong, India, South Korea, Switzerland, Venezuela, Mexico, and Chile. Each one of them is required to fill out an INS I-9 form, attesting to his eligibility to work in the United States. Then each one has to show Jauregui a document to verify that eligibility.

"There are about 30 *types* of documents they can use to satisfy the I-9, and then there are subsets of those types that include dozens and dozens of other documents," Jauregui notes. "I'm not going to sit here and tell you that we have a litmus test for each one, that we can authenticate each one. There's no way."

Indeed, an employer not only has to be able to tell the difference between all kinds of arcane INS permits, from the I-94 form to the I-551 stamp, but among literally hundreds of documents generated by other state, local, and federal authorities. Do you know what a Kentucky driver's license is supposed to look like? How about a South Dakota voter registration card? A Hopi Indian tribal document? A U.S. Coast Guard merchant mariner card? A Virgin Islands birth certificate? A Tucumcari, New Mexico, school district ID card? A patient record from the Norton Sound Health Corporation hospital in Nome, Alaska? All those and many, many more are on the list of documents that employers must accept.

"It is just overwhelming for many employers to have to inspect these documents," says Matthew Bartosiak, a senior consultant with the Employers Group, a nonprofit association that assists California companies with personnel issues. "You almost have to be an immigration attorney to have a full understanding of all these documents. You have people walking in every day, all day long, with different documents with different expiration dates and different conditions attached to them. They are seemingly endless. The INS issues a booklet with samples of some—but it's far from all of them. And the booklet is printed in black and white, which is not very helpful when you're dealing with color documents.

"Employers are required by law not to knowingly hire people with fraudulent documents. And on the other hand they have to be careful not to discriminate against anyone, or they're vulnerable to a lawsuit....They're told, Be particular, but not too particular—don't discriminate. It's a very thin line employers are always walking, a very tough line. And employers are not documentation specialists."

This paper tower of Babel makes it easy for well-intentioned employers to find themselves mired in a legal mess that is costly even under the existing law. Just ask Laurie.

Laurie—because she still has legal action pending, she doesn't want her real name used—owns a Mexican restaurant in a small, rural town in the Northeast. One day last year, just as the lunch rush was beginning, a half-dozen INS agents showed up and sealed all the exits. Then they worked their way through the restaurant, demanding identification from all 15 employees.

"It infuriated me," she recalls. "They acted like a bunch of Gestapo people, standing at the doors like that. In a little town like this it doesn't take much to catch everybody's attention, and I felt like I was being branded a criminal. Every time I asked them what my rights were, they just ignored me. It didn't take me long to figure out that what my rights were, were none."

Eventually the agents arrested five Mexican employees—the manager, assistant manager, two of the three cooks, and a waiter. All five had shown what looked to Laurie like legitimate papers. And the INS agreed it wasn't her fault; she wasn't charged with anything connected to the five illegals.

"But then they started going through my files on the other workers," she says. "The rest were all Americans, every single one of them born here. But every time the INS found one little thing wrong, an *i* not dotted or a *t* not crossed, that was a $275 fine. When they were done, it was $8,000.

"Listen, I run a small restaurant in a small town. This is no joke to me. That amounts to eight to 10 days' receipts for me. And the fine itself is only part of it. I lost about a month's worth of business, because we could hardly function with a third of the staff gone in the blink of an eye. There isn't another Mexican living within a hundred miles of here, so I had to fly one cook in from Sacramento and another from El Paso. Even then business was slow while we trained everybody. And I had to travel a couple of hundred miles to hire a $250-an-hour immigration attorney to plead my case. It's crazy! A little person like me, paying an attorney $250 an hour. In the end, this is going to cost me $50,000, and I'll be lucky if the restaurant is still open."

Immigration lawyers say this refrain is drearily familiar. "I'm representing an employer now whose net income last year was $13,000," says San Diego attorney Peter Larrabee. "It's a little mom-and-pop bakery that makes tortillas for Mexican restaurants. The INS wants to fine them $7,800." The acid conclusion of Larrabee, himself a former INS official: "When you get right down to it, employers are just a cash cow for the Immigration and Naturalization Service."

OK, maybe it's just a teeny, tiny bit unfair to throw somebody in jail and seize their property just because they got fooled by a phony Delaware driver's license. But the solution to that seems simple enough: We'll make it simpler for employers by reducing the number of acceptable documents and making them easier to verify.

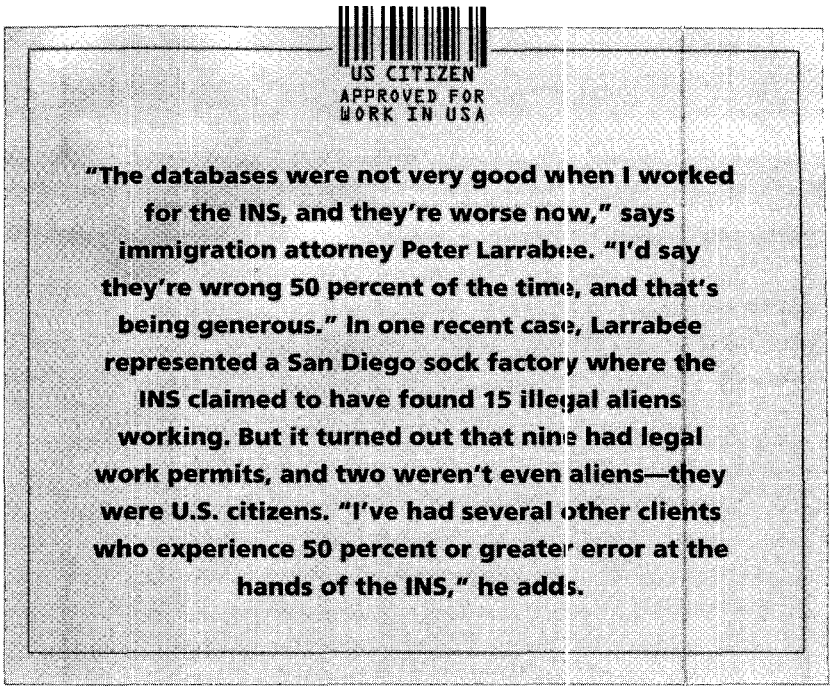
For instance, why can't an employer just call the INS and ask if an immigrant is eligible to work? In these days of computerized databases, that shouldn't be so hard to rig up.

That very thought has occurred, more than once, in Washington. In 1992, the INS conducted an experiment with telephone verification at nine companies scattered around the country, ranging from the little Modern Italian Bakery in Oakdale, New York, to the giant Houston-based construction firm Brown and Root.

Each company paid $775 for what the INS called a "point-of-

sale device," a little computerized gizmo that attaches to a telephone, closely resembling the thing merchants use to verify credit card numbers. Anytime an immigrant applied for a job at any of the nine companies, his name, birth date, and alien registration number were punched into the device, which relayed them to an INS computer in Washington. In a moment, the computer popped back with a message authorizing employment.

That was the theory, anyway. The reality was that 28 percent of the time, the INS computer could find no record of the immigrant and ordered the employer to send in the name on paperwork so that a clerk could search the records by hand—a process that took up to two weeks for each request. Two-thirds of those cyberspasms turned out to be caused by keypunch errors or missing INS files, not immigrants sneaking into the country without INS approval. Ultimately, only about 9 percent of the immigrants were ruled ineligible to work. That means there were 19 percent who *were* eligible but who had to wait, along with their employers, while INS clerks rummaged through their files.



"The databases were not very good when I worked for the INS, and they're worse now," says immigration attorney Peter Larrabee. "I'd say they're wrong 50 percent of the time, and that's being generous." In one recent case, Larrabee represented a San Diego sock factory where the INS claimed to have found 15 illegal aliens working. But it turned out that nine had legal work permits, and two weren't even aliens—they were U.S. citizens. "I've had several other clients who experience 50 percent or greater error at the hands of the INS," he adds.

An 81 percent success rate is pretty good if you're shooting basketball free throws. It's abysmally low when you're playing with people's lives. (And the error rate doesn't even count the caprices of the INS computer. One day, for instance, it simply refused to consider any first name beginning with the letter Z.) But the Clinton administration was so delighted with the telephone verification program that it is expanding it to 1,000 companies.

What's truly amazing about this is that, quite aside from the high error rate, the telephone verification system has a colossal loophole that makes it utterly useless: It depends on a job applicant confessing that he's a resident alien. All an illegal immigrant has to do is lie and say he's an American citizen; then his name is never submitted to the computer.

Well, then, why not link the INS computers with the Social Security Administration's and verify *everybody's* name, regardless of citizenship? It still won't work. "What if I walk in and give my mother's Social Security number, or a friend's, or one I buy from somebody on the street?" asks Cecilia Muñoz, senior immigration policy analyst of the National Council of La Raza, a Latino lobbying group. "You can't just have a phone-in system without some way to prove a person's identification. And the way to do that is with a card."

A card. It sounds so benign. You might call it, as California Sen. Dianne Feinstein does, a "machine-readable card that all job and benefits applicants would be required to present to verify their work or eligibility for assistance." Or you could call it a national ID card and work permit, because that's what it is. Or you might just want to call it a passport to hell, because for a lot of us, that's what it will be. At the very least it will put every American's right to earn a living at the mercy of the federal government's whimsical computers. And at the very worst—which, history teaches us, we have every right to expect—it will be a brutally effective tool for the surveillance, manipulation, and punishment of anyone who runs afoul of Washington's imperious corps of social engineers.

Nearly all the anti-immigration warriors, from Peter Brimelow to Rep. Barney Frank, favor a national ID card. There are various proposals for the form a card might take, but the most chic around Washington is the one proposed by Feinstein.

Feinstein's ID would look very similar to a credit card, with a strip of magnetic tape across the back. Encoded on the tape, along with your Social Security number, is your thumbprint. A potential employer inserts your card in a computerized reader, then asks you to put your thumb on an optical scanner. The computer compares your thumb to the print on the card, and, if everything's kosher, it phones a Social Security/INS computer in Washington, which decides whether you're eligible for a job. The fingerprint stuff may sound a little science fictionish, but the scanning equipment is already being commercially marketed. (The *price*, though, may read like science fiction to many of the small businesses required to buy the scanner-readers: $2,000 apiece.)

Feinstein says this process will be "fraud-resistant" and "counterfeit-resistant." Perhaps this claim is best evaluated by a professional fraud and counterfeiter.

"There really is nothing you can make that's 100 percent tamper-proof or 100 percent fraud-proof," says Frank Abagnale. "That's one of the reasons I don't think there will ever be a national ID card. We don't even have very good money. It's the worst currency in the world, printed with technology that's 75 years old. It's pathetically easy to counterfeit. I don't see how the government can come out with a secure ID when it can't even come up with a good dollar bill."

Abagnale speaks with some authority on the subject of counterfeiting: A boy wonder of the world of bunko, he forged $2.5 million in checks by the time he was 25, passing phony paper in 26 different countries. Two decades ago, he went straight and began working as a secure-document consultant. He designed the

American Express Official Check, the company's version of a cashier's check, and the Clinton administration consulted with him on its doomed national health card.

"In California, they spent a fortune on their new driver's licenses," the Tulsa-based Abagnale observes. "They put holograms in them, used sophisticated sealants in the printing, just poured money into the design. And a few months after it was introduced, they arrested a forger with 50 licenses in 50 different names. I told them, All you've done is stop some kid from changing the birthdate on his license in order to buy a beer."

The anecdote about the driver's license is telling, because it leads to the unlocked back door into the national ID card: the ease with which all the "feeder documents"—the documents from which any federal verification database will be drawn—can be forged.

"Look, I designed the state of Florida's birth certificate," says Abagnale. "It's got a street price in Miami of $5,000, so it's obviously a very valuable document. But it's still ridiculously easy to defeat all the security I put into it. I'll tell you how. A forger comes to Miami, goes to the Bureau of Vital Statistics and asks to see the death records for 1948. They'll let him view them in the office. He picks out an infant who died at birth and copies down all the information it's got there—the mother's name, the father's, the time of birth, all that stuff.

"Then he walks right down the hall to another office where he can apply for a certified copy of the birth certificate. All he has to do to get it is to pay $5.00. And once he has that, he goes across town to a Motor Vehicle Department office and gets a driver's license in the name of the baby on the birth certificate. And with a driver's license, he can apply for all kinds of documents. For just 50 bucks, you can create 10 different identities for yourself in just a couple of days."

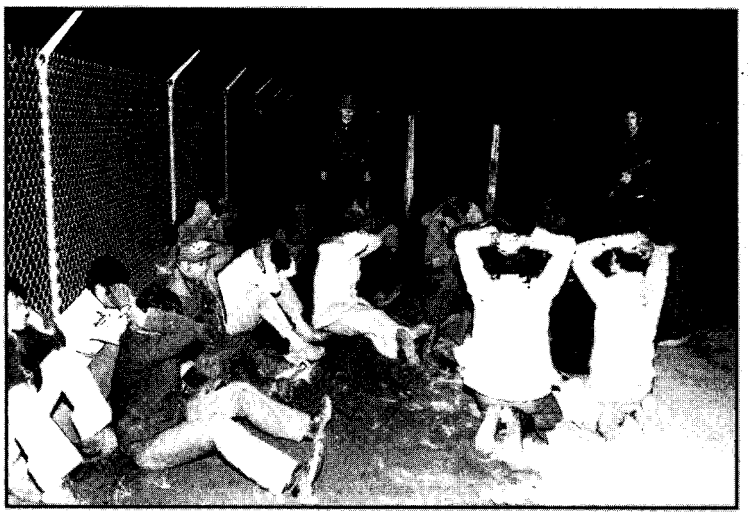
"I don't think people understand how many loopholes will be built into any attempt to create a national ID card," says immigration attorney Larrabee. "It has to do with the way our government is structured, federal rights versus states' rights. We have no federal birth card. Every state registers births differently, and none of them has ever made security a high priority....

"Birth certificates in Texas, for instance, were not even centrally registered until 1948. And even then it was done in a pretty slipshod way. Any birth reported to the state was just written in a big ledger book, without requiring any doctor's signature or anything."

Not that federal records are much more reliable. Until 1972, the Social Security Administration would take an applicant's word about his age and identity when issuing cards. In 1991, Gwendolyn King, the agency's commissioner, testified to Congress that more than 60 percent of Social Security numbers were based on unverified statements. "That, of course, means that the Social Security number simply cannot be used effectively as a means of identification," she added.

The only ones likely to find a national ID card a significant obstacle to working will be honest people who become accidentally snarled in red tape. And there are likely to be a lot of them. The card will depend heavily on INS records to establish work eligibility—records that, a 1989 Justice Department audit found, are incorrect 17 percent of the time. And a lot of people think that figure is way too low.

"The databases were not very good when I worked for the INS, and they're worse now," says attorney Larrabee. "I'd say they're wrong 50 percent of the time, and that's being generous." In one recent case, Larrabee represented a San Diego sock factory where the INS claimed to have found 15 illegal aliens working. But it turned out that nine had legal work permits, and two weren't even aliens—they were U.S. citizens. "I've had several other clients who experience 50 percent or greater error at the hands of the INS," he adds.



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Even if we gave the Border Patrol the billions of dollars it would cost to extend Operation Gatekeeper across every inch of the 2,000-mile Mexican border, and even if it succeeded in stopping 100 percent of the immigrants, at least 155,000 illegal aliens a year would still be getting into the United States.

Because the victims of INS screw-ups are typically foreigners at the bottom end of the economic food chain, we hear little about them. But that will certainly change when the national ID card comes on line. A GAO study in 1988 showed that about 65 million people in the United States change jobs or enter the work force each year. Let's suppose that somehow the INS, through a superhuman effort that defies all our previous experience with federal bureaucracy, whittles its error rate down to a minuscule 1 percent. That's 650,000 people thrown out of work by mistake *every year*. The vast majority of them are bound to be U.S. citizens, native-born and bred.

Of course, they'll get their jobs back. Eventually. When the computer goofed during the 1992 test of the telephone verification system, it took the INS up to two weeks to search a job applicant's file by hand. And that was dealing with 2,668

searches over the course of a year. How long will the searches take when there are 650,000 a year? Six weeks? A month? Two months? And while the unlucky victim of the computer is waiting, who will pay his rent and buy his groceries? Perhaps the Feinsteins and Brimelows will show an unexpected humanitarian streak and permit workers bounced by the computer to start working while their cases are investigated. But that will force companies to invest weeks or months in training employees who may not even be eligible to work.

There's another number tucked away in the footnotes of the telephone verification system study that is worth thinking about. A full nine months after the study was over, the fine print admitted that four cases were still "pending." These were four people ruled ineligible to work who protested that they had the proper documents. As the study noted parenthetically, "employee is waiting for appointment with INS, awaiting further documentation, etc." That is, they were tethered to the ninth circle of bureaucratic hell.

"We're talking here about allowing a federal bureaucracy to decide whether people are entitled to have jobs," notes Jauregui, the accountant. "For a lot of people it's just going to be a nightmare. There was a story in *The Washington Post* a couple of weeks ago about ITT-Gillfin, which got overpaid almost eight million bucks on a federal contract. Right away the company said it had been overpaid and tried to give the money back. But the government insisted it was right. It took 15 months before ITT-Gillfin could get them to accept the check.

"So that's how promptly the federal government acts when a major U.S. corporation is trying to *give it money*. How do you think it will do when Jose Sanchez from East L.A. says he's been incorrectly denied a work permit? Give me a break!"

"The really horrible thing about this is that what we're talking about here with the 650,000 is a *really optimistic* scenario—an unrealistically optimistic scenario," observes John Miller of the Center for Equal Opportunity, a pro-immigration think tank. "Imagine a 5 percent scenario and you're up to 3.25 million people thrown out of work. Or a 10 percent scenario, with 6.5 million out of work. Either of those is probably more likely....

"The estimates of the illegal immigrant population of the United States run between 3 million and 4 million, out of a U.S. population of 260 million. That means maybe 1.5 percent of the U.S. population is illegal. Because of the actions of 1.5 percent of the population, suddenly the federal government has to monitor all the employment decisions made in this country? Doesn't that seem like a classic example of overreach?"

Well...maybe not to some people. "There have always been people in government who are attracted by the idea of a national ID card," says the Hoover Institution's Anderson. "It's potentially usable for so many purposes that it gives the government a good deal of power over its citizens. One of the protections we have against invasive government power is its inability to keep track of us in every single thing we do. But a national ID card, coupled with computerized databases, removes that protection. And to some parts of the government, that is the very thing that makes it attractive."

Naturally, the proponents of the card resent the implication that there's anything sinister about the idea. "It is not carried on the person, it is not an internal passport, it is not used for law enforcement," Wyoming's Sen. Alan Simpson, the card's staunchest advocate, once snapped during a debate with Anderson. "It is presented at the time of new hire, and not just by people who look foreign, but by everyone. And it will say on it, I'm authorized to work in the United States of America—that's it."

But you don't need to be a paranoid survivalist huddled in an Idaho cave to have doubts about that. It's not that a federal administrator will call a press conference to announce, "We've decided to use the national ID card to practice fascist repression against all Americans." Instead, the first exceptions to the nothing-but-employment rule will come for some purpose that everybody agrees is beneficent: say, tracking welfare applicants to make sure they aren't collecting benefits from more than one office.

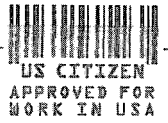
Then somebody else will propose that the card be used to hunt down deadbeat dads. And how about for keeping guns out of the hands of convicted felons? Tracking prescriptions of narcotics? Tracing people with sexually transmitted diseases? And from there—"welfare cheats, tax cheats, pedophiles, terrorists, you name it, whatever you happen to be looking for today," predicts Robert Gellman, a privacy and information policy consultant who was formerly chief counsel to the House Subcommittee on Government Information.

"Eventually, it *will* be used as an internal passport," he continues. "Next time there's an Oklahoma City bombing, you think they wouldn't ask everyone to provide their ID card? There may be rules against it. But whatever rules are made can be changed. It's very easy to do. All you do is pass another law."

When the government stockpiles information, no matter how benign the intent, there is inevitably a malignant mutation somewhere along the way. Presidential misuse of the Internal Revenue Service is so routine that it's practically part of the job description. Herbert Hoover raided IRS records for information on his conservative critics at the Navy League. Franklin Roosevelt used them against Huey Long and Father Charles Coughlin. The Nixon administration pulled so many IRS files that White House staffers called it "the lending library." What's the big deal? asked Vernon Acree, the IRS official who sent the files over to the White House. We did the same thing for Truman, Eisenhower, Kennedy, and Johnson.

Even the supposedly apolitical head counters at the U.S. Census Bureau have been unable to keep their promises not to share their most intimate data with anyone else. During World War I, the Census Bureau provided the Justice Department with names and addresses of conscription-age young men to aid in the apprehension of draft dodgers.

And in an even more infamous case, it helped carry out the internment of Japanese Americans after Pearl Harbor. Each time a roundup of Japanese was planned in a new city, Census Bureau statisticians joined the meeting. They "would lay out on a table various city blocks where the Japanese lived and they would tell me how many were living in each block," recounted Tom Clark,



"One of the protections we have against invasive government power is its inability to keep track of us. But a national ID card, coupled with computerized databases, removes that protection," says Hoover Institution scholar Annelise Anderson. And such power is tempting. Even the supposedly apolitical head counters at the Census Bureau helped round up Japanese Americans after Pearl Harbor. Each time a roundup of Japanese was planned in a new city, the alien control coordinator recalled, Census Bureau statisticians "would lay out on a table various city blocks where the Japanese lived and they would tell me how many were living in each block."

the Justice Department's coordinator of alien control at the time. (Clark, later a Supreme Court justice, gave his account in an oral history for the University of California.) From there it was a simple matter for the U.S. Army to conduct block-by-block sweeps until all the Japanese were safely penned up in barbed wire.

Consider also the willy-nilly growth of the Social Security number. When the numbers were created in 1935, they were supposed to be used for one thing only: to record individual workers' payments into the Social Security system. Eight years later, Franklin Roosevelt decided all new federal record-keeping would be based on the numbers. In 1962, the IRS adopted them as taxpayer identification numbers. And after Congress permitted states to use the numbers for welfare payments and driver's licenses in 1976, they mushroomed: food stamps, school lunches, federal loans, even blood donations required Social Security numbers. These days it's almost impossible to open a bank account or hook up your telephone without one.

Like the Social Security number, the national ID card will spread into the private sector. At some point it will surely be proposed that credit histories be made a part of the computer dossier that's attached to the card—mind you, just for use if someone applies for a federal loan. And soon after that, banks will start demanding that *their* loan applicants sign a waiver permitting access to the files. Attorneys pressing employment discrimination lawsuits will clamor for the hiring records of every firm in the country, and woe to the company without a statistically correct percentage of left-handed black lesbians in its workforce.

For all the mischief that the private sector may create with the card, the real danger will still lie with the government. Because the card will double as a work permit, the government will have a truly unprecedented power to punish those it decrees antisocial. With a single keystroke, it can instantly destroy their ability to earn a living. How long before Janet Reno proposes two years without the right to work for anyone convicted of wife beating? Or "hate speech"? Or owning an "assault weapon"? And when Pat Buchanan is president, what kind of suspension of the work permit do you think he'll want for violation of the sodomy laws? Or flag burning? How long before both parties agree that Americans should have to pass drug tests to obtain, and annually renew, their right to work?

The campaign for a national ID card is not new. It first got serious consideration early in the Reagan administration, when Attorney General William French Smith suggested it during a Cabinet meeting. At first there were murmurs of assent. Then presidential assistant Martin Anderson (husband of Annelise) spoke up.

"Mr. President, I would like to suggest another way that I think is a lot better," he counseled. "It's a lot cheaper. It can't be counterfeited. It's very lightweight, and impossible to lose. It's even waterproof. All we have to do is tattoo an identification number on the inside of everybody's arm."

Reagan snorted. "Maybe we should just brand all the babies," he jibed.

The idea was never again taken seriously. Until now.

At press time, two immigration-control bills were pending approval of the judiciary committees in Congress. Sen. Alan Simpson's bill (S 269) would require all parents to have their children fingerprinted by the federal government and force everyone older than 16 to submit fingerprints or other "biometric" data to be used on a new federal birth certificate (which would become a de facto national ID card); S 269 would also force each person crossing the border by land to pay $1.00 tax per crossing.

Rep. Lamar Smith's bill (HR 1915) would expand civil-forfeiture law, allowing the federal government to seize the assets of illegal immigrants, those suspected of hiring illegals, and anyone using or creating false immigration documents; add 1,000 new border guards for each of the next five years; and reduce the number of immigrants who can enter legally by about one-third, to 535,000 a year. An amendment offered by Rep. Bill McCollum (R-Fla.) would require a "hardened, tamperproof Social Security card" including "a photograph, hologram, biometric identifier, and such other technology as is available to make the card as secure against tampering and counterfeiting as is feasible."

Both bills would establish a national worker registry, linking the databases of the Social Security Administration and the INS; reduce the number of refugees who could enter the country each year to 50,000, about half the number who enter now; and expand the ability of government agents to wiretap suspected employers or smugglers of undocumented workers.

Maybe picturing our brave new life with a national ID card makes it a little easier to imagine the Martinez family's life in Cuba. Or, for that matter, after Cuba. The U.S. Coast Guard ship that plucked Lizbet and her parents from the ocean took them to a prison camp on the U.S. naval base at Guantanamo

Bay. They had plenty of company: 25,000 other men, women, and children whose only crime was fleeing communist tyranny. (In other camps nearby were several thousand Haitians who were picked up as they bolted from their island's nightmarish violence and grinding poverty.) The Martinezes lived in a sweltering canvas tent in the middle of a dusty field that turned instantly into a sea of mud at the first drop of rain.

Though most of the refugees were young and able bodied—who else would try to float to the United States on a raft?—there was no work. Nothing to do but lie on their cots in the heavy tropical heat and dream of how close they'd gotten to Florida. In many ways, nothing had changed for these refugees except the flag flying overhead.

It wasn't long before they were plotting escapes, just as they had plotted escapes from Castro. Some of the men even went to the base commander and asked if they could build rafts in an attempt to float to Haiti. He just gave them a funny look. Others were more creative. When *radiobemba* spread the word that pregnant women would be moved to Miami, because the camp's hospital tent wasn't equipped to handle childbirth, a wave of romance flashed through the camps, and suddenly maternity clothes turned high fashion.

For men, there was a medical loophole, too, but a grim one. Any refugee with an illness or injury too grave for the base doctors to treat was put on a plane for Miami. Soon the hospital tent was flooded with cases of accidental puncture wounds and broken bones. Some men injected themselves with cooking oil, creating grotesque infections that, in at least one case, led to the loss of a leg. The bravest—or looniest, take your pick—souls of all were those who squirted Tabasco sauce from the military-provided "meals ready to eat" up their rectums to aggravate their hemorrhoids to emergency levels.

The Martinezes didn't try anything like that. But Lizbet had caught a mild fever at sea, one that she couldn't shake, and after a few days Jorge took her over to the hospital tent. As they waited, several other children came in, just taken from rafts in various states of dehydration and malnutrition. "Their parents must have been crazy," one of the doctors stormed as he moved around among the shriveled, sunburned little bodies.

"Excuse me," interrupted Jorge Martinez. "But we're not crazy. One parent—if one parent did this, he might have been crazy. But there are 3,000 families with children here. Do you think all 6,000 parents could be crazy? We're just trying to give our kids a future in liberty."

The Martinezes "crazy" gamble on Lizbet's future eventually worked. After the Clinton administration belatedly decided prison camps were no place for children, a slow, steady trickle of families began arriving in Miami from Guantanamo. Five months after they were picked up at sea, Lizbet Martinez and her parents reached the United States. They're doing well. Lizbet already speaks English pretty well, her grades are all As, and she's been invited to play violin with the Greater Miami Symphony Orchestra a couple of times. Her mom is studying to pass the American dental boards. At night the whole family huddles over Lizbet's schoolbooks, passing an English dictionary back and forth, puzzling out the mysteries of this new country of theirs.

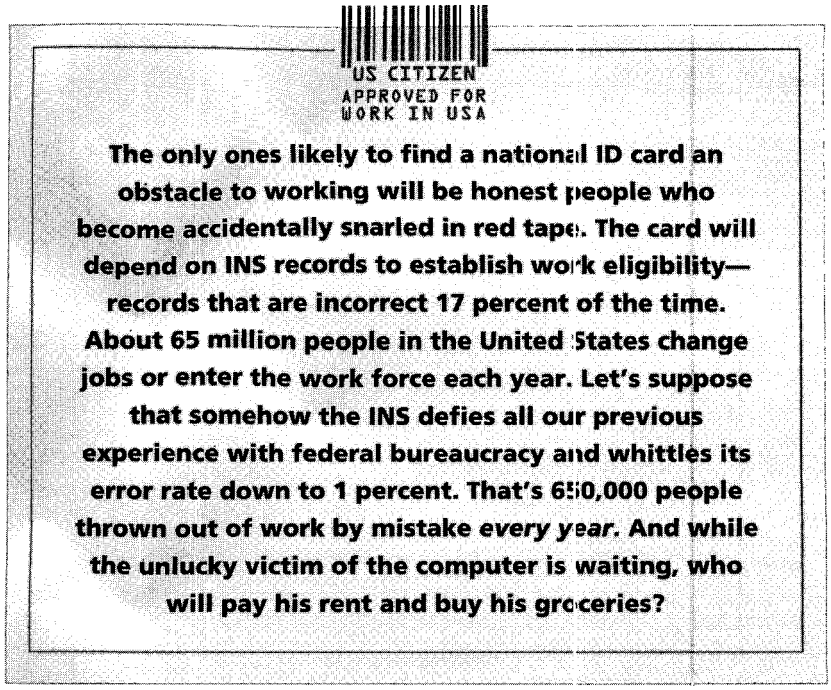
Pretty soon now, they'll be joined by all the friends they made in the camp. Military commanders at Guantanamo convinced Clinton that trying to detain 20,000 refugees in the camps indefinitely was a sure prescription for riots. By the end of the year, they'll all be resettled in the United States. The flip side of the decision: Instead of taking captured Cuban rafters to Guantanamo, the Coast Guard will hand them back over to Castro. Who has given his *solemn promise* that nothing will happen to them.

The Martinez family, acutely aware of the precarious status of immigrants in the United States these days, doesn't like to talk politics. But there is no trace of guile or irony in Lizbet's voice when she says that she'd like to send her thanks to President Clinton.

"It is very generous of him to let us come here," she says. "He didn't have to do it. On the boat, when I played 'The Star Spangled Banner,' I didn't know they were going to take us to Guantanamo. We hadn't heard anything about that yet. But even if I had known, I would still have played it. I felt so happy, seeing that boat coming toward our raft. For some people it would be nothing. But for us, it was like being born again. Going to Guantanamo was rough, but we knew we had to pay a price for liberty."

Lizbet and her family knew just how precious freedom really is. The question is, do we? ®

Contributing Editor Glenn Garvin's latest book, Diary of a Survivor: Nineteen Years in a Cuban Women's Prison, *co-authored with Ana Rodriguez, was published in June by St. Martin's Press.*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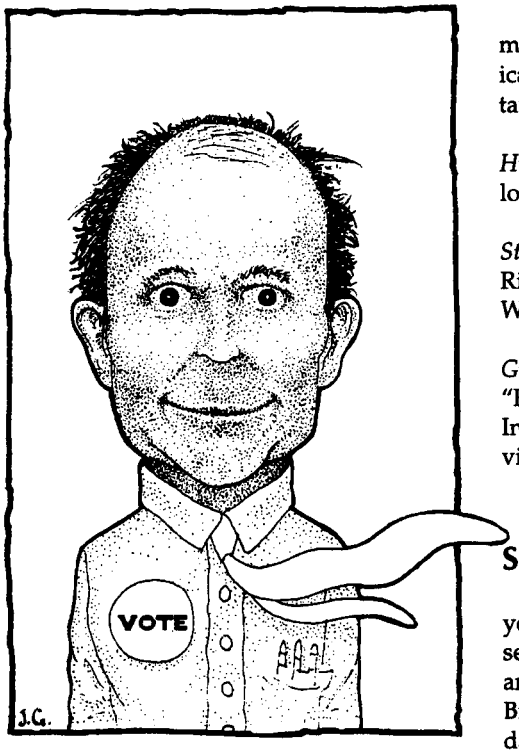

• "The Battle of Oak Grove" — *Randal O'Toole* recounts his community's struggle against some loony social engineers;

• "The Nine Myths of Public Education" — *John Taylor Gatto* explodes nine lies at the foundation of compulsory government schooling;

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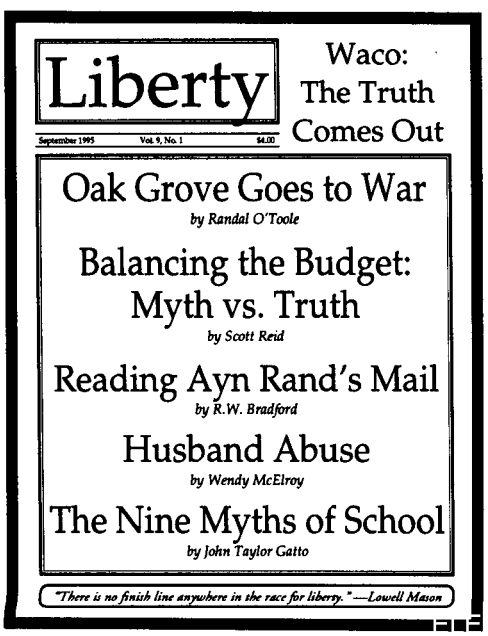
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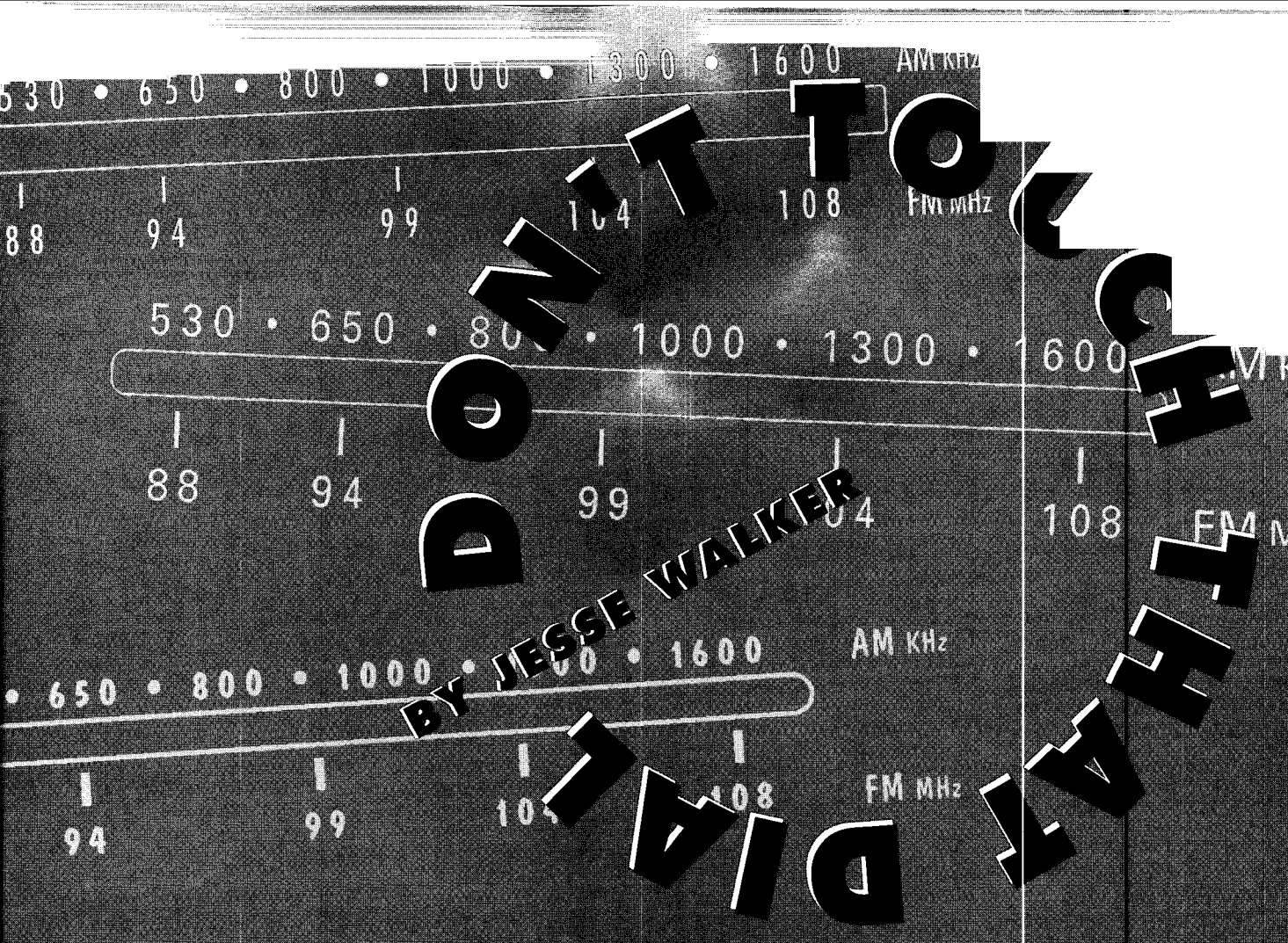

DON'T TOUCH THAT DIAL

BY JESSE WALKER

Free Radio Berkeley takes on the FCC—and official history

On January 20, 1995, for the first time in the history of the Federal Communications Commission, a federal judge refused to grant the agency an injunction to shut down an unlicensed radio station. The station is Free Radio Berkeley, a low-power FM operation started by broadcast engineer Stephen Dunifer in April 1993. Citing constitutional concerns, U.S. District Court Judge Claudia Wilkin has allowed Dunifer to continue broadcasting until she hears his administrative appeal in late September.

LICENSED TO [illegible]
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For 43-year-old Dunifer and his attorney, Louis Hiken, the heart of the matter is freedom of speech and democratic access to the airwaves. In a country dominated by media conglomerates, they argue, low-cost, low-power "micro radio" offers the little guy an opportunity to be heard—or would, if the FCC would legalize it. "America is made up of individuals, and they should have a right to speak," says Hiken. "And not just in their living rooms."

For the FCC, the case represents nothing less than a choice between order and chaos. The agency claims that Dunifer's pirate broadcasts have interfered with other stations' signals, and that a less-regulated system would only be an invitation to a complete breakdown of radio order. What Dunifer and other micro broadcasters are doing, says FCC attorney David Silberman, amounts to "anarchy of the airwaves."

The case reverberates far beyond the Bay area and the government's attempt to shut down a lone radio pirate. *United States v. Stephen Paul Dunifer* marks the crossroads where participatory technologies meet governmental controls that stifle the free expression they purport to facilitate. Rogue broadcasters such as Dunifer do more than challenge the FCC's current regulatory powers: They raise serious doubts about a state-sanctioned interpretation of history that views government control as the necessary response to all emergent forms of technology. Far from vindicating government involvement in broadcast licensing, the origins of commercial radio in the 1920s suggest that the state created the very chaos it seeks to enjoin.

United States v. Stephen Paul Dunifer reverberates far beyond the Bay area and the government's attempt to shut down a lone radio pirate. The case marks the crossroads where participatory technologies meet governmental controls that stifle the free expression they purport to facilitate.

In the two years since it was launched, Free Radio Berkeley has increased its airtime from three hours a week to 24 hours a day, attracting about 40 volunteers and a growing listenership in the process. Its music programming isn't all that different from that of a free-form college station, but its spoken-word broadcasts are close to unique. Besides community-oriented news and left-oriented commentary (including programs too controversial for KPFA, the local Pacifica outlet), Free Radio Berkeley offers its listeners frontline reports on other free-radio experiments around the world from Chiapas to Tokyo to Springfield, Illinois.

Dunifer considers his station part of a worldwide movement. He scorns not only corporate radio but also mainstream non-commercial broadcasting, dismissing it for its increasing political correctness and its reliance on government subsidy and corporate underwriting. "If grassroots radio is doing its job, it should be able to support itself," he declares.

Much of what Dunifer calls "grassroots radio" others would call "pirate radio." Pirate radio, of course, has existed for as long as there have been radio regulations to defy. The most famous ether pirates are the Jolly-Roger entrepreneurs behind Radio Caroline, Radio London, and the other offshore stations that challenged the BBC's staid programming in the 1960s with the latest rock sounds. Although the British government eventually drove them off the air, the BBC adopted its own pop programs in response to the competition. Today, within the subculture of shortwave hobbyists, there is a sub-subculture of illegal clandestine broadcasters whose programming ranges from counterculture comedy to neo-Nazi rants.

Micro radio—a blanket label for stations under 30 or so watts of power—is officially sanctioned in some nations, including Italy and Japan, where Sony and other companies sell relatively inexpensive "Community FM Sets" that include all the equipment necessary to start broadcasting. In other countries, such as Argentina, regulatory loopholes allow for a wide range of radio activity. Low-power micro radio, almost by definition, offers listeners material unavailable through other channels. As *Radio World* magazine characterized the Japanese micro broadcasters, "Unlike established radio stations that try to please all tastes, the low-wattage FM stations are doing all sorts of things the large stations would never dream of."

Whether fully legal, semi-legal, or explicitly forbidden, micro radio is often overtly political. In France, for instance, guerilla stations began broadcasting in 1977; future French President François Mitterand was involved in the Socialist Party's clandestine Radio Riposte. In the former East Bloc, samizdat radio and TV outlets such as East Germany's Kanal X evaded state censorship to present alternative news programming. In Argentina, over 2,000 small FM stations have sprung up in the country's shantytowns and poor rural areas over the last decade, offering community-oriented programming from almost every conceivable political point of view.

In the United States, micro radio remains strictly verboten, even though the technical cost of going on the air—now a couple hundred dollars plus the monthly power bill—has

Lawyer Louis Hiken (left) and micro broadcaster Stephen Dunifer fight FCC claims that Radio Free Berkeley is interfering with licensed stations. "The only people who've complained are the FCC themselves," claims Hiken. "They've driven up right next to the transmitters and reported that they're receiving unlicensed broadcasts on someone else's frequency."

been within most Americans' reach since the mid-1980s. Because of the current regulatory framework, however, the legal cost outstrips the technical one: almost $3,000 for a license, plus $100,000 or more in startup costs. And except in Alaska, the FCC doesn't issue licenses to stations below 100 watts, which raises startup and power expenses still further.

The 100-watt rule went into effect in 1980. Although there were several reasons for the change, the most significant was pressure from the Corporation for Public Broadcasting. The CPB persuaded the FCC that eliminating 10-watt Class D non-commercial stations would clear the way for larger, more "professional" National Public Radio–style outfits.

The effect was not only to artificially restrict access to the airwaves, but to ensure that those who did get onto the air, having risked more money in the enterprise, were less likely to experiment or try anything new. The latter problem was compounded by FCC indecency regulations: Programming that raises few eyebrows in a bohemian college town might attract listener complaints in more conservative environs that previously couldn't receive the offending signal.

Anti–micro radio sentiments still run strong among public broadcasters. "I'd like to see some of these pirates get roasted," says Fred Krock, engineering supervisor at KQED, San Francisco's outlet for NPR. "Listeners to this station should have a right to interference-free listening."

Krock neatly summarizes the most powerful argument the FCC and other critics have raised against micro stations: that they interfere with other stations' signals.

But although KQED is one of the stations that the FCC claims has received interference from Free Radio Berkeley, the KQED legal department says the station itself made no complaint; it must have originated with a listener or, more likely, the FCC itself.

Whatever the source of the complaint, Krock's patience has been drained by past interference problems. Once, he recalls, a religious network's local translator was blocking KQED's signal. Rather than cooperate in fixing the problem, the offending station suggested they resolve the dispute through prayer. If Dunifer is standing in the way of KQED's—or anybody else's—broadcasts, Krock concludes, Free Radio Berkeley should be shut down.

But for Hiken, Dunifer's lawyer, interference is a red herring. "The whole idea of micro radio is to not interfere. It's to communicate with people. If you're a small broadcaster and you go on the same frequency as a major broadcaster, you don't interfere—you get drowned out. If you have bad filtering or bad harmonics, that might be a problem, but that can be fixed."

Beverly Baker, chief of the FCC's Compliance and Information Bureau—the agency's investigative arm—isn't convinced by Hiken's scenario. "If they're both on the same channel, there's also a chance that *both* won't be heard," she argues. Technologically speaking, she's right. A one-watt station might be drowned out; a 30-watt station can cause problems. And Dunifer hasn't been limiting himself to one watt.

Sorting out the interference debate is hard, because there are really two issues at stake. First is the concrete question of whether or not Free Radio Berkeley is regularly interfering with other stations' signals. Dunifer insists that he isn't. Nobody has complained to him about interference, he says. And if they do, he'll immediately shut his transmitter down long enough to fix the problem.

"The only people who've complained are the FCC themselves," claims Hiken. "They've driven up right next to the transmitters and reported that they're receiving unlicensed broadcasts on someone else's frequency."

Hiken's accusation is bolstered by the FCC's response to a Freedom of Information Act request by *The Conspiracy*, the newsletter of the San Francisco Bay Area chapter of the National Lawyers' Guild. In mid-1994, *The Conspiracy* requested the origins, dates, and details of stations' complaints against Dunifer's broadcasts.

In its October 1994 reply, the FCC explained that "several informal inquiries or complaints were received from local broadcast engineer and consultant sources who either saw articles in

BOBBY LAW

the local newspapers, heard the broadcasts themselves, saw one of Mr. Dunifer's flyers, had read Mr. Dunifer's internet postings, or had seen or heard about the Commission's May 1993 monetary forfeiture action issued against Mr. Dunifer." Furthermore, "these contacts were made by telephone or in person,...no written records of the inquiries were made, and...the individuals involved expressly requested confidentiality." In other words, as of October 1994, all the complaints related to the fact that Dunifer was making unlicensed broadcasts, and not to specific instances of interference.

Have there been problems since October? Baker and Silberman of the FCC both cite a recent complaint by KFOG, an "adult rock" station in San Francisco. A telephone conversation with KFOG's program director draws a blank; he suggests I speak with the legal department of the station's parent corporation, Susquehanna, in York, Pennsylvania. There, one lawyer passes me on to another lawyer, who directs me to yet another lawyer, who says he isn't the person I should be speaking with.

Eventually, the origin of the complaint emerges: a letter dated May 2, 1995, sent from Susquehanna Senior Vice President Charles T. Morgan to FCC General Counsel William E. Kennard. The letter—sent from York, not San Francisco—appears to have been prompted by FCC prodding. "The existence," writes Morgan, "of Free Radio Berkeley and other so called 'Pirate Radio' operators in the San Francisco Bay area was a point of discussion at an FCC panel at the recent [April 1995] NAB [National Association of Broadcasters] convention in Las Vegas. Ms. Beverly Baker...was a member of that panel and stated that to her knowledge 'the FCC had not received any complaints concerning these illegal operations.' After this panel discussion, I discussed this matter with members of the Commission's staff who suggested that I direct this letter to you...."

As with the earlier FCC response, the bulk of Morgan's complaints concern the legal status of Free Radio Berkeley, not interference. Most of his evidence involves Dunifer's provision of equipment and advice to other illegal stations, via mail, Internet, and face-to-face workshops. As Morgan says, his primary intent is to document "the existence of these illegal operations and their total disregard for the FCC and its authority...the blatant attitude and complete disregard for federal laws that is apparent in the actions of Stephen Dunifer and his associates."

Nonetheless, Morgan does make some disturbing allegations—not so much his claims of interference (the letter lists just two listener complaints, only one of which involves KFOG), but the assertion that Dunifer simply isn't a micro broadcaster at all. Free Radio Berkeley's transmitting power, claims Morgan, is actually between 100 and 150 watts. Dunifer denies this. The question will no doubt be debated—and possibly resolved—at Dunifer's hearing.

Whether or not this particular pirate is guilty of stepping on other stations' corners of the spectrum, the second question remains: Are micro stations any more likely to block signals than larger outfits?

The answer is straightforward: no. Indeed, Dunifer argues that it's the high-watt operations that are the real problem. "The big stations like KQED can blast the front ends off other stations in the area," claims Dunifer.

KQED engineer Krock approaches the question from another point of view: "As I understand it, what the pirates would like to do is increase the number of broadcast channels in use. The problem with this is that the broadcast allocations in this country are based on allowing the use of inexpensive receivers by the general public. What appears to be a hole in the FM broadcast band may be there to accommodate the shortcomings of inexpensive receiver design. It would be possible to put more stations onto the broadcast band, but that would require the use of more expensive, more sophisticated radios by the public. And I haven't heard any of the pirates suggesting where this money should come from."

Big radio stations "might preclude not just one, but 25 stations from going on the air. In San Francisco, with its hills, you could have seven micro stations at once on one frequency without interfering with each other." In short, Hiken asks, if you're going to throw someone off the air, why go after micro radio?

In other words, cheap radios may make reception problems more likely. "Most Walkman-type receivers have trouble separating existing FM stations," says Krock.

Hiken doesn't buy it. For one thing, he argues, he and Dunifer aren't necessarily asking for the creation of *more* spectrum space; they'd be happy for the FCC simply to allocate a certain portion of the spectrum for micro radio, much as it reserves part of the spectrum for educational stations such as KQED.

But if Krock wants to play the spectrum-scarcity game, so can Hiken: "If you're going to have a megabroadcaster like KQED, that might preclude not just one, but 25 stations from going on the air. In San Francisco, with its hills, you could have seven micro stations at once on one frequency without interfering with each other." In short, Hiken asks, if you're going to throw someone off the air, why go after Dunifer? KQED is a fatter target.

In fact, a major reallocation of broadcast space is

hardly necessary to accommodate both Free Radio Berkeley and a KQED listener's Sony Walkman. In radio, supply can spur demand; consumers purchase new equipment when it makes sense to buy it. When the Japanese government ended its broadcast monopoly in 1950, the market for radio and TV receivers boomed as the new stations produced material audiences wanted. Before, there hadn't been a good reason to spend more. And, of course, as production increased to meet the new demand, prices began to fall.

When the FCC talks about interference, it isn't just attacking one pirate who may or may not be cutting in on other stations' signals. It's raising the specter of chaos. "This opens up such a can of worms," government lawyer Silberman told Judge Wilken after she refused to grant the FCC its injunction. "You're giving carte blanche for this group of people to operate a radio station without a license."

This may seem a bit coy. Hiken and Dunifer are not demanding an end to broadcast licensing—they're trying to undo the 100-watt rule. Still, in interviews, Dunifer does ruminate freely about an FCC-free world. "Anything that comes with a license comes with other baggage," he told *Spin* magazine. "The real issue is that the micro community itself can be self-regulated. If there are disputes, why do we need intervention at the federal level? If someone is being really outrageous, you can resort to simple legal tort action."

Well then: What would the airwaves be like without licensing? Would we have Dunifer's self-regulated spectrum or the chaos described by government officials? The early 1920s, a period in which a substantial number of radio stations had gone on the air but before the Federal Radio Commission—the FCC's predecessor—was created by the Radio Act of 1927, provides some context.

Traditional histories of the period describe it as a time of radio gone ga-ga. The Department of Commerce handed out licenses without care for spectrum scarcity, the story goes, and the secretary of commerce (at the time, Herbert Hoover) was unable to hold the line against interference. Nineteen twenty-six ushered in what's been called the "Breakdown of the Law" period, during which the airwaves degenerated into complete chaos. Then Congress created the Federal Radio Commission, which undertook the long-overdue task of reducing the number of licenses to fit the available spectrum.

Recent scholarship has shown this history to be almost entirely incorrect. Since Ronald Coase's classic *Journal of Law and Economics* article of 1959, "The Federal Communications Commission," most economists have recognized that a more rational solution to the problems of the "Breakdown of the Law" period would have been to recognize property rights in the broadcast spectrum and treat interference, as Dunifer suggested to *Spin*, as a tort. Newer research—notably, UC-Davis economist (and REASON contributing editor) Thomas Hazlett's 1990 article, "The Rationality of U.S. Regulation of the Broadcast Spectrum," also published in the *Journal of Law and Economics*—has shown that such a property rights–based order had in fact arisen in the '20s, without federal direction.

As soon as the Department of Commerce started handing out licenses, a "priority in use" system of property rights spontaneously emerged, says Hazlett. Broadcasters homesteaded particular frequencies at particular times of the day (24-hour stations were rare then). Spectrum rights were freely tradeable, and freely traded. Some areas adopted, without government prodding, the institution of "silent night," in which local broadcasters would shut down for an evening to allow listeners to tune in to long-distance signals. As the demand for licenses began to exceed supply, problems developed—but they were being dealt with.

The radio market before extensive regulation was not chaotic. When chaos did arrive, it was induced by government policy, not market failure. From the very beginning, broadcast regulation did more to protect established interests and limit programming variety than it did to stave off disorder and protect consumers.

"Beginning in September 1921," writes Hazlett, "when the Commerce Department first recognized radio broadcasting as a distinct license category, the department initially allowed just a single frequency (360 meters, or 833.3 kHz) to be used for broadcasting, necessitating complicated time-sharing agreements. (What interference took place during this 1921–23 period was, in essence, an outcome of government control: over 500 broadcasters were 'responsibly' bunching up all at the same point on the spectrum to which they had been directed by the Commerce Department, and operations were not always perfectly synchronized.) When this single channel became scarce, Hoover denied new licenses. The *Intercity* decision [*Hoover v. Intercity Radio Co.*] in February 1923, growing out of just such a denial, determined that the secretary had no authority to withhold a license but did have the legal right to set hours of operation and frequencies."

Meanwhile, established broadcasters, looking for protection against competition, wanted the govern-

ment to limit the number of new licenses it would issue. They had a friend in Hoover. The groundwork for the "Breakdown of the Law" was laid after the secretary decided, in November 1925, to stop issuing new licenses, arguing that the spectrum was completely filled. He invited a court challenge, and one arrived in April 1926: *United States v. Zenith Radio Corp.* Like *Intercity*, *Zenith* denied Hoover the right to withhold a license. Unlike *Intercity*, however, it denied him discretion over time and wavelength assignment.

Hoover did not appeal the case. Instead, he asked Acting Attorney General William Donovan which District Court decision to follow. On July 8, Donovan came out for *Zenith* and asserted that the government had no authority to define spectrum rights. "Faced with open entry into a scarce resource pool, a classic 'tragedy of the commons' ensued," writes Hazlett. "Stations had to be licensed by the secretary of commerce; once licensed, they were free to roam the dial, select their own transmitting location, choose their desired amplification level, and set their own hours." Hoover had created a crisis, and Congress quickly created the Federal Radio Commission to deal with it.

The Federal Radio Commission (precursor to the FCC) ignored non-regulatory solutions to conflict. In 1926 WGN sued the Oak Leaves Radio Station, claiming that the latter had committed trespass by interfering with its signal. The court ruled in WGN's favor, basing its decision on homesteaded property rights. The commission had no use for this approach.

At the same time, non-regulatory solutions were ignored. In November 1926, for instance, WGN had sued the Oak Leaves Radio Station, claiming that the latter had essentially committed trespass by interfering with its signal. The court ruled in WGN's favor, explicitly basing its decision on homesteaded property rights. But the commission had no use for this approach.

Nor did it have any use for expanding the spectrum to allow more stations to broadcast. This was technically feasible but politically unpalatable to the big broadcasters, who preferred to make room by eliminating their smaller competitors. The industry defeated spectrum expansion by arguing it would require listeners to buy expensive new sets to hear the additional stations. That this might be preferable from a consumer's point of view to not being able to hear the other stations at all was not considered.

In August 1928, the commission announced General Order 40, its spectrum reallocation plan. The effect, as University of Wisconsin historian Robert McChesney argues in his 1993 book *Telecommunications, Mass Media, and Democracy*, was to eliminate most nonprofit stations (about a third of the 1920s radio market) and to nurture the networks. The commission favored "general public service" stations over "propaganda" stations, the latter defined, in McChesney's words, as broadcasters "more interested in spreading their particular viewpoint than in reaching the [broadest] possible audience with whatever programming was most attractive."

Inaugurating a line of thought to which the FCC still hews, the commission argued that there simply wasn't enough "room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether." While this wasn't necessarily true, it nonetheless helped the commission fulfill the big broadcasters' agenda. The National Association of Broadcasters, the commercial stations' trade association, was effectively under the control of the two major networks (CBS and NBC), and a revolving-door relationship between the association and the commission was firmly in place. Many commissioners went on to lucrative positions at the networks or the NAB.

In short, the system of the early 1920s was not chaotic. When chaos did arrive, it was induced by government policy, not market failure. Alternatives to regulatory control were ignored. And from the very beginning, broadcast regulation did more to protect established interests and limit programming variety than it did to stave off disorder and protect consumers.

It's not clear whether Stephen Dunifer and Free Radio Berkeley will prevail against the FCC. At press time, his hearing, which has been delayed several times, is scheduled for September 22. Only this much is certain: If he wins, his victory will be a welcome sign for those who would like to see radio become a more open and participatory medium.

Another certainty: Despite the scorn of establishment stations such as KQED, Dunifer and Free Radio Berkeley have their supporters in the "legitimate" radio world. "I think they're great," says Rasta Black, a volunteer at KPOO-FM, an independent community station located on Dunifer's home turf, the San Francisco Bay area.

"They can say a lot of stuff we're not allowed to say—things that we have to keep aware of, that we're not allowed to do," explains Black, who goes on to complain about the cost, in money, paperwork, and time, of meeting FCC regulations.

"They have a lot more freedom, and that's what we'd like to have," he concludes. "Power to the pirates." ®

Jesse Walker is assistant editor of Liberty.

A Confederacy of Boobs

How special interests, assorted ideologues, and a sensationalist press torpedoed breast implants—and now threaten other medical devices

SCOTT STANTIS

By Michael Fumento

"Not only are they abusing the judicial system, but they are emotionally abusing the women." That's what one silicone breast implant recipient told the *Boston Herald* following the decision of Dow Corning to file for bankruptcy. Dow Corning had contributed about half of a $4.2 billion settlement—the biggest ever—for women claiming to suffer various illnesses from their implants.

Earlier this year, however, it became clear that there were far more women trying to get a piece of the pie than there were slices. Plaintiffs' attorneys were saying that $74 billion might be needed to satisfy just the first set of claims against the companies. Rather than close its doors forever, Dow Corning chose to try to limit its losses.

Financially, it's unclear where the bankruptcy leaves implant claimants. But what has become more and more certain since the settlement was reached back in 1993 is that while both the judicial system and silicone implant recipients have been terribly abused, the villain isn't Dow Corning or any other implant maker.

Indeed, women with breast implants have been nothing more than pawns in a bizarre game involving lawyers, feminists, headline hounds, and super-inflated bureaucratic egos. The stakes, however, go beyond the physical and mental health of women with implants to include the future health of millions of Americans who will need insertable medical devices. Indeed, the multimillion-dollar awards against silicone implant manufacturers have already triggered a wave of suits against medical implants made of solid silicone and even some containing no silicone at all.

Women with breast implants have been nothing more than pawns in a bizarre game involving lawyers, feminists, headline hounds, and super-inflated bureaucratic egos. The stakes, however, go beyond the physical and mental health of women with implants to include the future health of millions of Americans who will need insertable medical devices.

"We have great concerns that any medical device with silicone in it will not survive," says Elizabeth Connell, a professor of gynecology and obstetrics at Emory University and head of two Food and Drug Administration silicone breast implant panels that unsuccessfully recommended leaving the devices on the market. Since June 1992, most uses of silicone breast implants have been banned by the FDA. Annually, some 1.5 million patients receive silicone eye lenses; another 670,000 get artificial silicone joints. All told, about 7.5 million medical devices are implanted in Americans each year. Many of these devices—such as pacemakers, heart valves, and shunts which draw fluid off the brain—are life savers.

Hence, the misinformed campaign against silicone breast implants raises issues that go far beyond the not insignificant question of whether women should be able to change their appearance as they see fit. A strange alliance of diverse interests, including FDA bureaucrats interested in broadening their powers, feminists who equate boob jobs with mutilation, and reporters more interested in good copy than relevant medical research, worked together to take implants off the market. The anti-implant campaign is nothing less than a case study in how medical public policy is often driven by anecdotal rather than epidemiological evidence, formulated by ideologues who have little regard for what individuals might value, and discussed in a consistently one-sided manner.

The use of silicone implants to enlarge the size of the breast dates back to 1963. Somewhere around one million American women have received them. Implants may be used either for "augmentation"—making a healthy breast or pair of breasts larger—or to replace a breast removed during mastectomy. It appears that about 60 percent of breast implants have been used for augmentation.

While there has been mention of possible disease caused by implants as far back as 1978, the kick-off point of the scare that ultimately prompted the FDA to ban silicone implants may have been the airing of an implant feature on CBS's *Face to Face with Connie Chung* in 1990. Chung's graphic imagery—she called silicone gel "an ooze of slimy gelatin that

could be poisoning" women—spurred one stampede of women to have their implants removed and another to file suits against implant makers.

As Chung herself later put it, the show "unleashed a torrent of protests and investigations around the country." Soon, women were bombarded with such stories as "Toxic Breasts," "The Hazards of Silicone," and "Time Bombs in the Breasts." The height of hysteria may have been reached when, after the FDA moratorium, two women removed their own implants with razor blades. They said they had no success in getting doctors to remove them.

A new front opened up in December 1991, when a California jury awarded a Marin County woman, Mariann Hopkins, $7.3 million from Dow Corning. She alleged aches, pains, and fatigue caused by her implants without citing any illness more specific than autoimmune disease, a catchall phrase for a variety of connective-tissue diseases such as rheumatoid arthritis, scleroderma, lupus, Sjogren's Syndrome, fibromyalgia, and Raynaud's Disease.

In January 1992, the FDA declared a voluntary (but strongly recommended) moratorium on the sale and use of silicone breast implants pending review of additional information, saying, "physicians should cease using them and manufacturers should stop shipping them." Four months later, the FDA essentially converted this to a ban, although the agency did allow continued use of the implants for women who had suffered mastectomies and permitted a small number of women who wanted implants for cosmetic purposes to enroll in long-term studies.

Like many health scares, the one over silicone implants is primarily American. While most countries haven't even seriously considered removing silicone implants from use, some have reviewed the evidence and affirmatively stated that implants should remain available. Because of the ban in the United States, American women have gone to other countries to get implants.

Like many health scares, the one over silicone implants is primarily American. Only a few countries besides the United States forbid the devices within their borders. One is Canada, even though the Canadian Independent Advisory Committee review showed no causal link between silicone breast implants and serious illness. While most countries haven't even seriously considered removing silicone implants from use, some, such as the United Kingdom, have reviewed the evidence and affirmatively stated that implants should remain available. In June 1994, the 20-member European Committee on Quality Assurance and Medical Devices in Plastic Surgery declared it "does not support any restriction on the use of silicone-gel filled implants."

Because of the ban in the United States, American women have gone to other countries, including the United Kingdom, Mexico, France, and Germany, to get implants. One popular package mixing implantation in an English hospital with a trip to Shakespeare's birthplace is called "Boobs n' Bard." Having to go abroad for implants, of course, prices some women out of the market. Women who do travel for implants face different problems: If something goes wrong with the surgery, the doctor is thousands of miles away. And malpractice suits are difficult to pursue in much of the world and virtually impossible in South and Central America.

The FDA seriously considered pulling saline-filled implants off the market as well. But in late 1994, it decided to allow their continued use pending approval applications due in 1998. Silicone is generally preferred to saline because it gives the breast a more natural feel. To keep saline-filled breasts from swishing like a waterbed, it is necessary to pack them tight with the solution. In breasts that are quite small to begin with, wrinkles or ripples in the implant surface are more easily visible through the skin and the breast may not move or hang as naturally as it would with silicone implants.

Whatever goes into the implant of the future, the silicone implants of today are in the bodies of a million or more women who need to know what risk, if any, these devices pose.

There are two ways that women can be exposed to silicone from an implant. One is when microscopic droplets of silicone fluid "bleed" through the envelope of a gel-filled implant. "Low-bleed" implants have been available since the early 1980s and have reduced the amount of silicone that escapes from the implant. In any event, because scar tissue quickly forms around the implant, the gel usually goes no further than one or two millimeters beyond the implant wall.

The other way women can be exposed is through rupture. According to the FDA, about 4 percent to 6 percent of silicone implants have ruptured, though studies in progress indicate this figure is probably too low.

Nonetheless, again the scar "capsule" that invariably grows around the implant tends to hold any silicone even if it breaks, which explains why so many ruptures are outwardly undetectable. While the gel has gone beyond the pouch, it still usually remains in place, although it has been found in the lymphatic system of some women.

That implants can cause physical problems is beyond doubt. It has long been known, for instance, that the scar capsule can harden and constrict, sometimes painfully so. This hardening can make necessary follow-up treatment to remove the scar tissue.

Makers of later model implants claim to have reduced this problem, but it's too early to say what success they may have had.

But when critics warn of the dangers of silicone implants, this usually minor problem is seldom what they're talking about. According to Jack Fisher, a San Diego plastic surgeon and outspoken defender of implants, more than 50 symptoms are alleged to be caused by implants, including memory loss, dry mouth, cancer, bladder problems, difficulty swallowing, joint pain, decreased sex drive, and a host of autoimmune diseases. Some have referred to this broad constellation of symptoms as "silicone-gel syndrome." But if it is a syndrome it appears the proper definition would have to be any illness that any woman with implants ever contracts.

To sympathetic observers, such a wide array of symptoms must seem alarming. But a general rule of epidemiology is that the more diverse the symptoms allegedly related to a single cause are, the less likely it is that the suspected cause is real. This basic precept is, in a sense, the mirror image of snake-oil cures that promise to remedy all sorts of unrelated symptoms. Many of the most commonly cited symptoms of silicone exposure—such as fatigue, headaches, and difficulty swallowing—can be brought on by suggestion. As a result, people who hear that implants may cause certain problems may then develop them. These are the same "side effects" described by participants in drug studies who are actually receiving placebos.

And, in fact, most of the evidence against implants is anecdotal: It is based on reports from women who are sick and have implants and claim the two conditions are related. Thus, if a woman with implants ever develops symptoms that doctors can't readily explain, everyone simply assumes that silicone is the cause. Sometimes this sort of reasoning is expressed in the very titles of the implant scare articles. Consider the headline for the *San Francisco Chronicle*'s article about Mariann Hopkins: "After Breast Implant, Horror Began."

While such a loose correlation may be appealing to people looking for quick and easy answers, it is essentially the same logical fallacy that blames black cats for inexplicable illness. Yet, in some cases, the silicone-gel symptoms actually predate the implants. Indeed, such a curious time frame appears to have been the case even in the first big implant settlement.

One of Mariann Hopkins's treating physicians testified that, although her diagnosis of mixed connective-tissue disease did not come until after the implants were put in, she had already displayed symptoms of connective-tissue disease as early as two years before receiving implants. The doctor even testified that another physician was so concerned that he subjected her to a battery of tests for one type of connective-tissue illness called systemic rheumatic disease. Those came back negative, but they were not tests specifically for mixed connective-tissue disease. Had they been and had they come back positive, it's unlikely Hopkins would have ever received the $7.3 million award.

But then again, the jury did not seem overly influenced by those most knowledgeable of Hopkins's medical history. At the time of trial, Hopkins was basically free of symptoms, thanks to a low dose of medicine. And none of Hopkins's treating physicians testified at the trial that they believed her illness to be related to the implants. Instead, the jury made its finding on the basis of outside testimony that implants could cause such disease, testimony from professional anti-implant witnesses such as Tampa, Florida, physician Frank Vasey, who makes his living by treating women he says are sick from their implants.

Perhaps the most serious charge against silicone implants is also the weakest—that they may cause breast cancer. Although such influential groups as Sidney Wolfe's Public Citizen (founded by Ralph Nader) have made the claim, repeated studies have shown no such link. The only cancers ever plausibly attributed to silicone—in a study released over 40 years ago—were connective-tissue sarcomas that appeared in strains of rodents especially susceptible to cancer.

The simple truth is that no epidemiological studies have linked cancer to implants. After looking at almost 11,000 women, the Alberta Cancer Board concluded, "The incidence of breast cancer among the women who had breast augmentation could not be said to be either significantly higher or lower than that among the general population."

The simple truth is that no epidemiological studies have linked cancer in people to implants. The largest study is also the most recent: After looking at a group of almost 11,000 women from the Alberta, Canada, area, the Alberta Cancer Board concluded, "The incidence of breast cancer among the women who had breast augmentation could not be said to be either significantly higher or lower than that among the general population."

Polyurethane implants, which make up about 10 percent of implants currently in use, are a special case. Manufactured by Surgitek Inc., a subsidiary of Bristol-Myers Squibb Co., these implants featured a gel-filled pouch with a layer of polyurethane foam coating the silicone envelope. The implants were a special target of Connie Chung's *Face to Face* report. Under such heat, Surgitek felt it had no choice but to remove them from the market in 1991. (Nevertheless, a *USA Today* illustration in May 1995 accompanying an anti-implant

editorial depicted a polyurethane-coated implant.)

The purpose of the foam was to reduce the chance of scar tissue contracting around the implant. But when the foam breaks down chemically, it produces a substance called 2-toluene diamine (TDA) that is considered a probable animal carcinogen and a possible human one. Although that would seem to be an obvious source of trouble, it turns out that, like all the other serious accusations against breast implants, the charges against polyurethane implants don't hold up under epidemiological scrutiny. The only difference is that in this case the FDA has admitted it.

In late June, Bristol-Myers Squibb concluded an FDA-solicited study to determine how much TDA really ended up in the system of women with polyurethane implants. The amount (when any was found at all) was so small that even assuming it is a *definite* human carcinogen—using the FDA's own rating system—the risk of cancer was one in a million. Since only about 110,000 women have had such implants, the FDA stated in a position paper, "FDA estimates it is unlikely that exposure to TDA will cause cancer in even one of the women with these implants." The agency added, "The health risk connected with surgical removal of the implants is far greater than the risk of developing cancer."

There's another, deeper irony in the whole polyurethane controversy, one the FDA obviously couldn't state: that a product designed to alleviate the only absolutely certain health problem clearly linked to implants was forced off the market because of worries over other unproven health effects.

Since silicone gel from implants is most commonly accused of causing autoimmune disease, or connective-tissue disease, it isn't surprising that a large number of studies on both animals and humans have looked for a link between silicone exposure and autoimmune/connective-tissue disease. When the British Department of Health undertook a review of these studies earlier this year, it found approximately 270 papers published after 1971 alone.

The animal studies, the department concluded, "provide no immunological reason for concern over the use of silicone gels in implants." The report went even further, however: "None of these studies demonstrated that the coexistence of connective-tissue disease with silicone breast implants is any more prevalent than would be expected by chance."

New England Journal of Medicine Editor Marcia Angell has said that the FDA probably acted the way it did because implants are cosmetic and are of only subjective worth. Such worth can't be plugged into Kessler's cost-benefit analysis. Nobody questions the use of automobiles, even though they kill over 40,000 Americans a year, because we all have a common understanding of the worth of cars.

The largest study of connective-tissue disease to date appeared in the *New England Journal of Medicine* this past June. Conducted by the Harvard School of Public Health and the Brigham and Women's Hospital in Boston, the study looked for evidence of 41 types of connective-tissue disease among 87,501 nurses, of whom 1,183 had implants.

The results were unambiguous. The researchers found no "association between silicone breast implants and connective-tissue diseases, defined according to a variety of standardized criteria." Already anticipating the charge that they knew would be forthcoming from plaintiffs' lawyers—that silicone implants cause a special kind of autoimmune disease that doesn't show up with standardized criteria—the authors added, "or signs or symptoms of these diseases." In fact, they reported that women with silicone implants were significantly less likely to relate symptoms of these diseases or to complain of symptoms or signs of illness resembling connective-tissue disease.

For many health professionals, the *NEJM* study, added on top of all the others, was the final piece of proof needed. "I think we have enough data to end the moratorium," George E. Erlich, a Philadelphia rheumatologist and head of the FDA arthritis advisory committee, told *The New York Times*. Erlich emphasized he was speaking for himself and not the FDA committee, but he added that the International League of the Associations of Rheumatology also agreed unanimously there was no evidence linking implants to connective-tissue disease. And long before that, the American College of Rheumatology had already issued its own statement, saying, "There is no convincing evidence that these implants cause any generalized disease."

If the evidence against silicone implants is so weak—and has always been so—why have they inspired such commotion and fear? The chief reason has to do with the federal bureaucrat whose various power-grabbing machinations would embarrass a villain from Central Casting: David Kessler, commissioner of the FDA.

In December 1991, Kessler called together a panel of physicians, self-styled consumer representatives, and the like to evaluate the evidence of potential harm caused by implants. The verdict of the panel, though by no means unanimous, was that the devices should remain on the market pending collection of further data from studies already underway.

That, however, did not please Kessler, who ordered FDA staffers to solicit case histories from doctors of implant recipients who later claimed to have suffered ills as a possible result. Since lawyers had already begun soliciting women with complaints and sending them on to specially chosen doctors, finding such case

histories was probably not difficult. In any event, case histories reveal little because they don't allow for comparison groups. That's what the epidemiological studies were, but Kessler couldn't wait for them.

In January 1992, Kessler implemented the moratorium, citing the case studies as the reason (and glossing over the fact that he himself solicited them). The next month, he reconvened the panel to ply them with his new "evidence." The panel didn't budge and Kessler once again ignored its advice.

"We still saw no clear evidence of danger, though there were a number of unanswered questions," says Emory's Connell, who served as the chair of both panels. "We felt breast implants should stay available to women who, with informed consent, wanted to use them." Three and a half years after the first panel voted to recommend keeping the implants available, Connell says she would clearly do so again. "I think the difference is we could say it this time with a great deal more assurance."

"A whole new literature has been developed since that time," she explains. "We were operating on anecdotal evidence and case history. Now the evidence has been gathered by good people in well-designed studies so it's an entirely different situation."

The FDA's pseudo-scientific approach lends support to the more obviously ideological attack on breast implants from feminists. To many of the most vocal feminists, a preference for big breasts represents female oppression. Susan K. Brownmiller, in her landmark 1984 book *Femininity*, opined that "[e]nlarging one's breasts to suit male fantasies" represents the exploitation of women.

So why did the FDA ban silicone implants despite the lack of evidence that they are harmful? Pressure came from repeated anecdotal reports in both print and television media. The moratorium that became a ban occurred after more than a year of intense media pressure, including Connie Chung's inflammatory show, which was repeated a year later.

Congressional pressure, in the form of the late Rep. Ted Weiss (D-N.Y.), also came down on the FDA. Weiss, who chaired the House committee with jurisdiction over the FDA, accused Dow Corning of possible misconduct in its effort to document the safety of silicone implants and called for both the Justice Department and the FDA to investigate the company. (This May, the Justice Department dropped the investigation for lack of evidence.) He also accused the FDA of dragging its feet over the polyurethane-implant issue.

To be sure, there was pressure to keep implants available, too. It came from the American Medical Association, implant makers, plastic surgeons, and breast-cancer groups. But this was not the sort of public pressure that can embarrass an agency, and the breast cancer groups' objections were dealt with by allowing continued use of silicone implants for breast reconstruction following mastectomy.

The decision to ban implants was just the sort of thing one would expect from a regulatory body that puts so much emphasis on safety that it can't take anything else into account. *New England Journal of Medicine* Editor Marcia Angell has said that the FDA probably acted the way it did because implants are cosmetic and are therefore of only subjective worth. Such worth, says Angell, can't be plugged into Kessler's cost-benefit analysis.

In an *NEJM* editorial, Angell noted that nobody questions allowing the use of automobiles, even though they kill over 40,000 Americans a year, because we all have a common understanding of the worth of cars. "In the case of breast implants" though, wrote Angell, "the benefit has to do with the personal judgments about the quality of life, which are subjective and unique to each woman." But given "the difficulty of assessing the benefits, the FDA has acted as though there were none—at least when implants are used for augmentation." The result, said Angell, "is that [FDA Commissioner Kessler] may be holding breast implants to an impossibly high standard: Since there are no benefits, there should be no risks."

The FDA's pseudo-scientific approach lends support to the more obviously ideological attack on breast implants from feminists. To many of the most vocal and influential feminists, a preference for big breasts represents female oppression. Susan K. Brownmiller, in her landmark 1984 book *Femininity*, opined that "[e]nlarging one's breasts to suit male fantasies" represents the exploitation of women. "Big breasts are one of many factors that have slowed women down in the competitive race of life," she said. "Symbolically, in the conservative Fifties, when American women were encouraged to stay at home, the heavily inflated bosom was celebrated and fetishized as the feminine ideal. In decades of spirited feminist activity such as the Twenties and the present when women advance into untraditional jobs, small, streamlined breasts are glorified in fashion."

If large breasts signal oppression, say these feminists, then the implants used to enlarge one's breasts are tools of oppression. Scarsdale psychologist Rita Freedman, writing in *Beauty Bound*, claims, "Having been taught that feminine beauty means having full, softly rounded breasts, women judge themselves against this standard. Missing the mark, they put on padded bras or suffer silicone implants." Naomi Wolf, in her 1991 bestseller *The Beauty Myth*, states, "Breast surgery, in its mangling of erotic

feeling, is a form of sexual mutilation."

Having gone this far with imagery, it's a small step to start blaming implants for physical ills. This is precisely what happened after anecdotes began to appear linking implants to disease. Susan Faludi, in her popular book *Backlash: The War Against Women*, wrote matter-of-factly that leaking implants "could cause toxicity, lupus, rheumatoid arthritis, and autoimmune diseases such as scleroderma."

To such polemicists, it doesn't matter that the evidence for negative effects was weak. It was just too fitting that something in their minds so harmful to women as a class should be harmful to them as individuals.

Two women on the FDA panel translated such thoughts into direct action. Vivian Snyder, the panel's "consumer representative," told Kessler in a letter that "[t]he federal government now has the power to deliver a profoundly important message to the American public involving basic values, concepts of beauty and health," adding, "it would really be wonderful if the FDA could address such attitude-impacting mental health issues as what is really healthy and normal and maybe even beautiful...."

The other panelist was *Beauty Bound* author Rita Freedman. She sent a letter to Kessler decrying that implants "perpetuate the myth of Barbie Doll's Body" and asked whether breast augmentation will become, "like rhinoplasty [nose surgery], a rite of passage for affluent teens."

Such feminist participation in the anti-implant crusade has proven ironic, since the FDA's virtual ban has denied what feminists have always proclaimed as their goal—a woman's right to choose for herself. Faludi herself acknowledges that at one time the leading feminist journal, *Ms.*, "deemed plastic surgery a way of 'reinventing yourself—a strategy for women who dare to take control of their lives.'"

Writing in *NEJM*, Angell says, "It is possible to deplore the pressures that women feel to conform to a stereotyped standard of beauty, while at the same time defending their right to make their own decisions." If anything, says Angell, the act of withdrawing implants could be viewed as sexist because "people are regularly permitted to take risks that are probably much greater than the likely risk from breast implants," citing cigarette smoking and excess alcohol consumption.

When the FDA slapped the moratorium on implants, the impact went far beyond prohibiting a single surgical technique. "The widespread fear—and the multimillion-dollar lawsuits—have dated largely from the FDA's removal of breast implants from the market," says Angell.

One study comparing the attitudes of women with implants before and after the FDA moratorium found that after the moratorium the level of satisfaction dropped markedly, from 98 percent satisfied to 71–79 percent satisfied. The study authors said their findings were similar to those of the American Society for Plastic and Reconstructive Surgery in another poll.

As for prompting the "multimillion-dollar lawsuits," one need look no further for evidence than so many of the attorney advertisements soliciting silicone implant recipients. "THE FDA WARNS THAT SILICONE GEL-FILLED BREAST IMPLANTS PRESENT HEALTH RISKS" blared a typical ad of this sort in the Newark, New Jersey, *Star-Ledger*. Implant critics often cite money as the only concern of Dow Corning and other manufacturers. But few notice that the group which stands to gain the most from liability cases—trial lawyers—has a love of filthy lucre. In a single case involving three women complaining of implant-related illness, a jury in 1994 awarded $33.5 million, although the judgment was later reversed by an appeals court and then settled. Thirty-three percent of a multimillion-dollar award—lawyers typically take a third off the top—can be a powerful incentive for a law firm.

The American Trial Lawyers Association conducts seminars for implant plaintiffs' attorneys. It does so using selected data provided by Sidney Wolfe of Public Citizen. For $750, Public Citizen will also provide a list of medical experts and consultants, FDA reviews and FDA panel testimony, and a variety of other litigation documents. It will also refer clients to those lawyers.

It's hardly surprising, then, that the American Trial Lawyers Association conducts regular seminars for implant plaintiffs' attorneys. It does so using selected data provided by Sidney Wolfe of Public Citizen, the group most identified with criticism of implants. For $750, Public Citizen will also provide trial lawyers a list of medical experts and consultants, FDA reviews and FDA panel testimony, and a variety of other litigation documents. It will also refer clients to those lawyers.

Suing implant manufacturers has become a boom industry in the United States, with lawyers out to convince women that even though they may feel just fine they are really sick and must be properly compensated. With so much money to spread around, it also isn't difficult to get doctors to find patients.

"I get calls from women who say, 'I have implants. Where do I pick up the money?'" says Sandy Finestone of the Women's Implant Information Center in Irvine, California. The center disseminates information on implant safety. "You dangle $4 billion in front of them and it certainly gets their attention." Finestone has two polyurethane-coated implants that she makes

clear will not be the subject of litigation.

Indeed, attorneys have not only ignored scientists, they've attacked them. After Mayo Clinic rheumatologist Sherine E. Gabriel published a study in *NEJM* in June 1994, a lawyer claiming to represent 2,000–3,000 implant recipients began filing legal demands against her. "The magnitude of the demands is staggering; the burden is staggering," she told *The New York Times*. "They want over 800 manuscripts from researchers that were here, they want hundreds of data bases, dozens of file cabinets and the entire medical records of all Olmsted County [Michigan] women, whether or not they were in the study."

Not surprisingly, Gabriel says the demands have "severely compromised" her ability to do research and made colleagues of hers back off from doing their own implant research, for fear their findings would also infuriate plaintiffs' lawyers. "Some," she says, "determined that the price in terms of their own research careers is too high to pay."

The widespread association of silicone implants with various illnesses is largely the result of unsophisticated reporting on the topic. "The media may be portraying a closer link between implants and autoimmune disease than is actually merited because younger women tend to be more prone to autoimmune disease than other groups," explains David Leffell, associate professor of dermatology at the Yale School of Medicine. But the real question, says Leffel, is whether women with silicone implants are getting these diseases at levels higher than expected. All signs point to no.

With silicone implants, the media have managed to make news as much as report it. Clearly, they have had a significant impact on public perceptions, which then fueled both litigation and contributed to the FDA moratorium. This in turn fueled more litigation.

Whatever role sheer confusion—and ignorance of scientific data and principles—played on the part of the media, it is disturbing to realize that opportunities to present the other side were often ignored. In 1991, for instance, CBS reran the Connie Chung show that did so much to kick off the implant scare. But at the last minute, the network yanked a Dow Corning rebuttal to the program's charges. CBS didn't explain its decision. Apparently it felt its viewers would not benefit from an airing of both sides of the issue.

Unfortunately, the anti–silicone implant crusade has given women something very tangible to fear. Because of the negative publicity, as early as 1991 insurance companies were already denying or restricting medical coverage to women with implants. Now, because some doctors and lawyers have tied various illnesses to implants, women with implants who do eventually get any of those illnesses may find themselves without medical coverage. The founder of the Washington, D.C., chapter of the Y-ME National Breast Cancer Organization told a congressional panel, "In some instances, it is easier for a cancer patient to obtain insurance than one who has implants."

Emory University professor of gynecology and obstetrics Elizabeth Connell says the FDA's actions and the legal profession's high-tech ambulance chasing are "costing us not only what we [already] have but the chance for new and better products in the future. Instead of leading the world, we're now a third-rate country in terms of our ability to develop new drugs and devices."

In early June, even before the *NEJM* connective-tissue disease study, Y-ME Executive Director Sharon Green wrote to Kessler asking him to "make a public statement regarding the most recent epidemiological studies...to stop the current frenzy." The only statement he issued that month was a response to the *NEJM* study saying yet more evidence was needed.

Emory's Connell says the FDA's actions and the legal profession's high-tech ambulance chasing are "costing us not only what we [already] have but the chance for new and better products in the future. I think we're in a worse mess in American medicine than we've ever been in. Instead of leading the world, we're now a third-rate country in terms of our ability to develop new drugs and devices."

Indeed, J. Donald Hill, chairman of cardiovascular surgery at California Pacific Medical Center, worries that the anti-implant crusade will broaden into an attack against a wide variety of medical aids already on the market. The first device to go down the tubes may be the Norplant contraceptive, which after implantation into the arm releases a tiny amount of silicone into the system. While no suits have yet been filed, lawyers are encouraging women with the devices who have any sort of illness to contact them. Trial lawyer seminars are already being held, using some of the same instructors and same self-styled medical experts who torpedoed breast implants.

In a country so heavily dependent on science to improve the quality of our lives, to defend our shores, to feed our growing population, to prevent and cure illness, the resoundingly anti-scientific and successful crusade against silicone implants portends problems that right now cannot even be guessed.

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HUDscapades

By Brian J. Taylor

Residents wronged by "Fair" Housing Act

When her homeowners association wouldn't let May Oxx convert her house into a hospice, she filed a complaint with the feds.

WHAT GOOD IS YOUR constitutional right to petition the government if it only results in the government suing you? Homeowners —from Bakersfield, California, to Fort Worth, Texas—are asking themselves this question as they are prosecuted by the Housing and Urban Development and Justice departments on housing discrimination charges.

In 1992, Bakersfield residents David and Kathryn Fitzgerald, William and Linda DeRose, and Charles Kirschenmann asked a state court to prevent the opening of a boarding facility for mentally retarded adults. They argued that the group home would violate their subdivision's covenants, conditions, and restrictions (CC&Rs), which limit the use of homes to single-family residences. The residents also feared that allowing the commercial use of a house in their neighborhood would lower property values, says their attorney, Victor Wolski.

A judge issued a preliminary injunction against the facility, waiting for a judicial resolution. That case, however, can't be heard until another matter is settled: The U.S. Department of Housing and Urban Development—the federal agency charged with investigating discrimination in housing—has accused the five residents of violating housing discrimination laws. It brought suit against them in federal court in October 1993.

By trying to keep the group home out of their neighborhood, says HUD, the residents have run afoul of the Fair Housing Act, which states that it is unlawful to coerce, intimidate, threaten, or interfere with anyone's fair housing rights. The act prohibits discrimination based on race, color, religion, sex, handicap, familial status, or national origin. The Department of Justice is prosecuting the residents in *United States v. Fitzgerald*, which is scheduled for trial in November.

Shortly after being sued, the Bakersfield homeowners offered to drop their case against the group home if the feds would drop the discrimination suit. But HUD and DOJ refused, even though dropping the case would have meant the group home could have moved forward. The residents have refused to back down, and the temporary injunction against the group home remains in place.

The unwillingness of the government to settle the case constitutes "harassment and abuse" says Wolski, who, with the Sacramento-based nonprofit Pacific Legal Foundation, is providing pro bono help to the defense. The government, says Wolski, "is arguing that anyone who defends their property rights must be a bigot."

The government is now—in early August—acquiescing, and considering the original settlement offer from the residents. The residents, fearing thousands of dollars in damages, will agree to drop the state suit enforcing their CC&Rs if the feds leave them alone.

William and Linda DeRose, exhausted from fighting the boarding facility and being threatened by HUD, are selling their home. "It's easier to move than to deal with HUD," says Linda DeRose, who welcomes a settlement. "It's not worth fighting."

As two ongoing cases—*U.S. v. Wagner et al.* and *U.S. v. Robinson*—suggest, the Bakersfield case appears to be part of a larger strategy on the part of HUD and DOJ. What makes these cases telling—and adds to the image of HUD and DOJ as agencies motivated by bureaucratic vindictiveness—is that they are being prosecuted after HUD received a great deal of negative publicity in 1994 for the way it handled a case in which three Berkeley, California, residents opposed converting a hotel into a homeless shelter and drug rehabilitation halfway house. After a seven-month investigation of the residents, HUD backed down and withdrew its complaint.

In the wake of the Berkeley incident, HUD instituted agency guidelines to "insure that Americans' free speech rights are not infringed by investigations into fair housing complaints." The agency also issued a memo to its field staff that asserted, "The Department chooses to err on the side of the First Amendment" when deciding which cases to investigate. But HUD's actions in *Wagner* appear to belie its lofty proclamations.

Wagner began in May 1991 when 11 Fort Worth, Texas, residents tried to prevent a couple from selling their house to a county agency that planned to turn it into a group facility for the mentally retarded. As in *Fitzgerald*, the homeowners argued that a group home would violate local CC&Rs and were granted a temporary injunction from a state court judge. Nine

PHOTOS: BRIAN J. TAYLOR

days later, the residents became aware of a Texas law stating that group homes could not be excluded based on a deed restriction for single-family homes. Since the residents' prospects for winning were bleak, they withdrew their suit and the group facility, housing six retarded residents, opened in late 1991.

Four years later, however, the federal government has brought suit against the homeowners. HUD officials, believing that the Fort Worth residents had run afoul of the Fair Housing Act, referred the case to DOJ—which dutifully began prosecuting the residents for opposing the group home. "DOJ officials are acting akin to thought police who punish individuals for having improper motives," says Rick Disney, one of three attorneys for the defendants.

William and Linda DeRose, exhausted from fighting the boarding facility and HUD, are leaving. "It's easier to move than to deal with HUD," says Linda DeRose. "It's not worth fighting."

The government's actions have struck a nerve in the local community: Commenting on the case, the *Fort Worth Star Telegram* advised DOJ to "read the Constitution." The defense has filed a motion for summary judgment, hoping to get the case dismissed even before it begins in January 1996.

If *U.S. v. Robinson* is any indication, the defendants in *Wagner* have reason to be optimistic. This past February, a federal judge dismissed a HUD and DOJ discrimination complaint against homeowners in New Haven, Connecticut. In 1992, residents tried to prevent a group home for handicapped children on the grounds that it would violate zoning ordinances restricting the number of unrelated people allowed to live in a single home. HUD accused the residents of discrimina-

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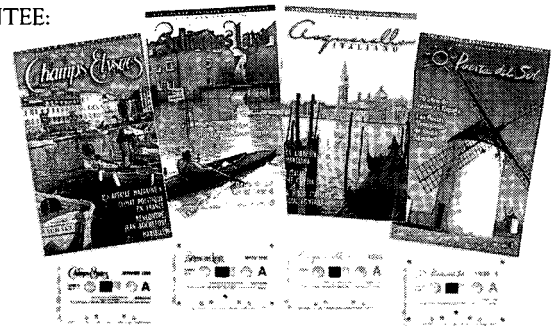

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tion and DOJ brought a case against them.

The residents withdrew their zoning complaint when they realized they were the target of a lawsuit. The group home opened, but DOJ proceeded with their case anyway. David Golub, an attorney for two of the six defendants in *Robinson*, told *The Hartford Courant* that DOJ officials were "on a mission" and "didn't care whether their arguments or their positions were correct or consistent with the law."

Federal Judge T.F. Gilroy Daly did, however, and he ruled in *Robinson* that DOJ had violated the First Amendment rights of the homeowners to petition their government by lawsuit. Hence, the defendants avoided over $100,000 in fines, although they incurred over $20,000 in legal costs anyway—and DOJ is appealing the decision.

WHILE THE NEW HUD GUIDELINES MAY have repaired some public-relations damage, they've had no effect on the agency's actions, says Wolski, the defense lawyer in the Bakersfield case. That's because once HUD refers a case to DOJ, the latter agency—which isn't bound by the guidelines—takes over.

In another recent action, HUD is investigating members of a Westlake Village, California, property-owners association for possibly violating the Fair Housing Act. Their alleged crime was not actually filing a lawsuit, but just considering one.

May I. Oxx, a member of the Windward Shores Homeowners Association in Westlake Village, is trying to turn her home into a hospice for the terminally ill. Other members of the association voted in an annual meeting to enforce their CC&Rs, which they believe prohibit the opening of a commercial facility. And then Oxx filed a complaint with a HUD field office, accusing her fellow association members of discriminating against the disabled—her potential terminally ill patients.

But the homeowners oppose the commercial use of property—not the disabled—says Doris Goetz, president of the Windward Shores board of directors. Goetz is infuriated that HUD has sent the board members notification letters, threatening them with thousands of dollars in fines. For trying to enforce their CC&Rs—a duty the board is legally charged with—HUD sent each member a letter telling them they could each be held liable for $100,000 for discrimination.

Doris Goetz, president of the Windward Shores Homeowners Association: "I am angry that there is some governmental agency addressing mail that is so offensive to me. Why am I being punished for doing what I am mandated to do?"

"I looked at my name on these papers," says Goetz. "I read them through, and by the third time I was mad. I am angry that there is some governmental agency addressing mail that is so offensive to me. Why am I being punished for doing what I am mandated to do? It's a damnable insult!"

HUD's California spokesman, John Phillips, says HUD uses "standard language to inform people of possible ramifications" in its letters, and insists the letters are not scare tactics. HUD hasn't taken any legal action against the homeowners association, as the agency investigation is not yet completed. And, says Phillips, HUD officials hope they can resolve the issue before it escalates.

Robert Saperstein, attorney for the homeowners, doubts Phillips's claim. Saperstein spoke with HUD "conciliator" Frank Riley, "and he basically told me that if we take any action toward filing a state suit he'll turn the issue over to the Department of Justice."

Rep. Anthony C. Beilenson (D-Calif.) was concerned enough about HUD's actions that he sent a letter to HUD officials, asking them to allow the homeowners to pursue their legal questions without threats by HUD, says Beilenson staffer Glenda Barnard. While HUD and DOJ currently enjoy relative autonomy, both agencies may soon receive closer congressional scrutiny. In a written statement to REASON, Rep. Charles Canady (R-Fla.) says, "I am concerned that the free speech rights of certain citizens are being overlooked or abused" by HUD and DOJ officials. He says the House Subcommittee on the Constitution, which he chairs, will "carefully evaluate this problem." And *The Washington Times* reports that Sen. Slade Gorton (R-Wash.) is also upset by recent HUD and DOJ actions, and, with other congressional Republicans, will seek an amendment to the Fair Housing Act to curtail the investigative powers of HUD and DOJ.

Although the DOJ failed to return numerous calls, a HUD official in Washington insists that the agency is complying with its own guidelines by requiring field offices to clear cases with Washington before starting an investigation. The HUD official also says there are certain circumstances when lawsuits are not protected by the First Amendment: when they are designed to promote an illegal purpose, are motivated by an intention to discriminate, or are frivolous.

Interestingly, in deciding *Robinson*, Judge Daly explicitly challenged such reasoning. He wrote: "While the defendants' alleged motives may be abhorred, it remains true that 'the Constitution protects expression...without regard to the...truth, popularity, or social utility of the ideas and beliefs which are offered.'"

If the "Bakersfield 5" or Westlake Village homeowners have their day in court, they can only hope their judge agrees with his Connecticut colleague. ®

Brian J. Taylor (DBXJ84C@prodigy.com) is REASON*'s 1995 Burton C. Gray Memorial Intern.*

Drunkard's Dream

By Brian Doherty

The dangers of government aid for substance abusers

Bob Coté, who runs a Denver shelter for "street people," says SSI is "killing people on the installment plan."

CHERIE STEINBERG

NOT EVERY BAD GOVERNment program strews corpses behind for people to find. But Bob Coté has stumbled upon a few that he lays at the feet of the Social Security Administration's Supplemental Security Income program. Coté runs Step 13, a Denver shelter for "street people," as he unsentimentally calls them. He reels off some names of the victims of a program he calls "killing people on the installment plan."

Through the innocent-sounding Supplemental Security Income program, the federal government is "the country's largest supplier of alcohol and drugs to addicts," Coté charges. And that alcohol and those drugs often kill their users, as well as leaving them prey to a violent street culture that leaves many battered bodies for every dead one.

The program began in 1974 as a supplement to the 1956 Social Security Disability Insurance program, which gave disability relief money only to those who had paid in to the Social Security tax fund. SSI, unlike Social Security Disability Insurance, comes out of general Treasury funds, and you needn't have paid in money beforehand to cash in. You just have to be destitute and disabled, according to government definition.

The deadly rub, say Coté and congressional critics, is that alcoholics and drug addicts meet that definition. This has led to greater and greater amounts of federal money going to an "aid" program that subsidizes potentially deadly habits, is expanding ever more rapidly (often through fraud), and shows no evidence of helping any of its disabled charges to mainstream. Attempts at congressional reform have begun, but they have not gone nearly far enough and could easily be stymied by bureaucratic and judicial activism.

COTÉ'S STEP 13 ACCEPTS NO GOVERNment money. He complains that a liquor store down the street gets the equivalent of his $210,000 yearly budget in SSI money from drunks. SSI demands that a third party receive and disburse the dole money for drug addicts and alcoholics (DA&A, in SSI lingo); unfortunately, in many cases that third party is a drug dealer, liquor store, or flophouse runner. The first of the month, when the SSI checks come in, is eagerly awaited as "Christmas Day" by Denver's street people.

It's a day of mayhem and violence as well. Street criminals are well aware there are plenty of drunks wandering around then, pockets bulging with cash. "Someone's always sticking another one to get what's left," says Coté. "I know one guy, he gets beat up every month for his SSI check. He doesn't have his check any longer than four hours. He picks it up at a clinic, goes to the bar—in later stages of alcoholism it just takes one or two drinks to get 'em going—as soon as he goes to the bathroom, street pirates are all over the place, beat him up and take the rest. I ask him, 'Bob, how many times does this have to happen to you?' "

It can only keep happening for three more years. Maybe.

In response to press reports of abuses of the program—convicts getting on SSI in prison, unscrupulous translators coaching immigrants to fake disability, children encouraged by their parents to act crazy to climb aboard the gravy train—and testimony from people like Coté, Congress last year passed a reform bill imposing a 36-month limit on getting SSI cash just for being a drunk or drug addict. The bill also toughened, on paper, fraud controls and requires, again on paper, more reviews of past claimants to make sure they still belong on the rolls.

Congress is demanding 100,000 reviews a year from 1996–98, plus a review of everyone on the children's rolls who hits age 18—standards the Social Security Administration has never been able to meet in the past. SSA spokesman Tom Marganau complains there is no increased funding for the reviews, which cost on average $1,000 per case. Whatever their upfront costs, the reviews promise big dividends down the line; SSA estimates $4.00 in lifetime savings for every dollar spent on case reviews.

The reviews are important not only to check on changed circumstances, but also to double-check on past fraud. In a paper done for the Cato Institute, Christopher Wright, publisher of Activists Online on the World Wide Web, has gathered many fraud reports, both from government watchdogs and the press.

Such cases include Cambodian interpreters in Southern California coaching recent immigrants on how to fake mental disability during interviews and providing them with bogus psychiatric testimony, and a clever New Yorker who pretended

to be, alternately, a psychiatrist, neurologist, and attorney in order to funnel multiple SSI claims to himself. Some investigations and press reports suggest that the use of crooked translators and third-party helpers in getting SSI cash is widespread, but the government's own statistics on fraud have been stagnant since 1985—"largely attributable to insufficient monitoring and enforcement," says Wright. The program's enormous growth since 1985 makes a steady fraud amount unlikely.

The main impetus for third-party fraud is the back payments you can get when you're accepted on SSI, dating to when you first applied. You can make big money helping people get on the rolls, fraudulently or not. Coté was enraged by a billboard across from his shelter placed by a law firm—"poverty pimps"—encouraging people to use the firm for help in getting on the SSI dole, for a percentage of the back benefits. These huge lump-sum giveaways, which can amount to tens of thousands of dollars, can lead, Coté says, to often-fatal drinking and drug binges. After the billboard appeared in a newspaper story on SSI, the sign was taken down. Here in Los Angeles, I regularly hear radio ads for a firm encouraging people to come to them for help in getting on SSI.

THERE'S A BIG "BUT" IN THE NEW CONgressionally mandated 36-month limit for DA&As. If you can prove any other psychiatric or physical disability—and often long-term drunks or drug addicts have made themselves sick—you can get back on the rolls under that category. Even now, there are plenty of substance abusers on the rolls for reasons other than their substance abuse, and the 36-month limit doesn't apply to them. But the possibility of their using the dole money to support damaging habits still remains.

So last year's reforms don't go nearly far enough toward ending the federal subsidization of self-damaging habits. Congress is mulling further reforms this year that might do better. The initial House bill eliminates the DA&A category and gives drug treatment money to the states instead, kicks off most noncitizens, and toughens requirements for children getting on the rolls. A bill from the Senate Finance Committee going to the floor at press time also restricts payments to DA&A and noncitizen categories. Other possibilities to stem SSI growth include sending the whole program back to the states in block grants or establishing a flexible ceiling with adjustments only for inflation and population growth. It's too early to say what's going to happen right now. But with last year's action and this year's talk, the program is beginning to feel embattled.

The main reason SSI rolls are exploding is that SSI spends millions beating the bushes for new clients. Coté first found out about SSI from pamphlets being distributed by suited gentlemen to his skid-row clientele.

For good reason. SSI has been ballooning beyond any expectations. Just from 1987–93, the number of under-65 SSI clients rose 65 percent, from 2.3 million to more than 3.8 million. And the percentage of DA&As has skyrocketed in the past decade. In 1984, there were only 4,021 such on SSI. In 1991, there were 33,869; and then in just two years the number more than doubled, to 78,730 in 1993; the 1994 estimate is 101,000. That's a small percentage of the total, but it's still a lot of drunks to support. (The bulk of the others on SSI are not traditional disabilities like blindness or lack of mobility, either; 57 percent on the SSI dole are there for mental disorders.) The rise in DA&As isn't hard to figure out from talking to Coté: SSI is a drunkard's dream if I ever did see one, and Coté talks contemptuously of SSI gatekeepers with "their masters in sociology coming up against guys with doctorates in streetology."

What has caused this phenomenal program growth? Even SSA researchers rule out more bleeding-heart answers such as a worsening economy driving more disabled into penury. The real reasons seem to be typical of the modern welfare state: self-perpetuating bureaucracies more interested in serving their perceived client base than the taxpaying commonweal, and judicial action spreading entitlement rights further than lawmakers envisioned.

The main reason SSI rolls are exploding is that SSI spends millions beating the bushes for new clients. Congress gave SSI $21 million in 1990 for a multiyear outreach project. Much of that money went to various local advocacy groups to find disabled people and guide them through the application process. Coté first found out about SSI from pamphlets being distributed by suited gentlemen to his skid-row clientele. Funding interested activists to help balloon government aid rolls is one government program that works just as planned.

The institutional mindset, as SSA's Marganau explains it, has never been to streamline costs or keep the program at a manageable level; it has been that "there weren't as many people on the program as are potentially entitled....SSA wasn't doing enough to go out and find them, encourage them to sign up." SSA this year announced an entirely new application procedure that it says will save lots of money, but that calculation is based on the assumption that making the application process easier will not increase the number of people on the program.

But proposed reforms set forth in the SSA's Fall 1994 *Social Security Bulletin* seem designed to do just that. They include making sure SSI information packets are more widely available to advocacy groups; encouraging "interested third parties...to participate in the development of claims" and then letting them do all the interviewing, checking of medical records, and form filing with only cursory occasional monitoring from SSA; not requiring face-to-face interviews with claimants; ensuring that disability claims

workers never "discourage a claimant from filing an application" and go out of their way to ensure people don't "inappropriately withdraw" from applying. All of these reforms, of course, "cannot be implemented without the full funding, development, and installation of a new case processing computer system." The end result is unlikely to be a cheaper, leaner program.

The point of these programs, proponents say, is not to be cheap, but to help those who need help. But giving people debilitated by alcohol and drugs money to buy more is in no way helping them. While SSI theoretically requires its charges to go to treatment, the General Accounting Office found that only one in five actually went, and of course such treatment is not always effective.

The federal government's vocational rehabilitation program for the disabled doesn't really help either, says a 1993 GAO study. GAO looked at around 865,000 rehab candidates from 1980 and traced them both before and after the program. It found that any "gains in economic status made by clients rehabilitated in 1980 were quite temporary. [Among those] classified as rehabilitated...after 2 years the proportion with any earnings from wages returned to near or below pre-program levels." And those were the clients who *were* considered rehabilitated; many going through the program were not. GAO estimates that "not more than 1 out of every 1,000 DI and SSI beneficiaries leaves the rolls as a result of SSA's return-to-work assistance." Only one out of 200 beneficiaries of the two programs are even sent to vocational rehab.

THE COURTS ARE ANOTHER PETRI DISH FOR runaway program growth. The 1990 Supreme Court case *Sullivan v. Zebley* widened the standards for letting children on the rolls. As a result, the number of children on SSI rose 191 percent from 1987–93; not only were future applications affected, but past denials are being reviewed under the new standards. In the early '80s, the Reagan administration tried kicking 490,000 people off the SSI and DI rolls. The results? First, lawsuits galore, with hundreds of thousands who had been kicked off SSI being kicked back on again by judges, and then the 1984 Social Security Benefits Reform Act that cemented into law new barriers to kicking anyone off again.

The same thing could well happen after any new reform. Congress, for example, could decide to kick noncitizens off the rolls. But as Christopher Wright points out, courts have generally taken a dim view of restricting noncitizens, who are still taxpayers, from enjoying taxpayer benefits on an equal basis.

Funding interested activists to help balloon government aid rolls is one government program that works just as planned.

The details of the SSA's proposed program reforms, the *Zebley* decision, and the Reagan-era experience in attempting to clean the stables of SSI all make any short-term optimism about meaningful control over the program doubtful; what the legislature achieves, the bureaucrats and judges can undo.

Still, SSI's current growth trend can't go on forever. Wright projects SSI costs rising 60 percent by 2000 from its 1994 $22 billion price tag, and the SSA considered 2.7 million new applications in fiscal 1994. One way or another, the program must change. As a separate program for the disabled poor, it has been a total failure. It doesn't do anything effective to change their situation and in many cases helps them to destroy themselves. But meaningful change is unlikely to come before Bob Coté discovers the corpses of more of his charges.

"I try to fix people, not just feed 'em," he says. "The bar down the street gets almost my budget from the government to kill them." ◆

Brian Doherty is assistant editor of REASON.

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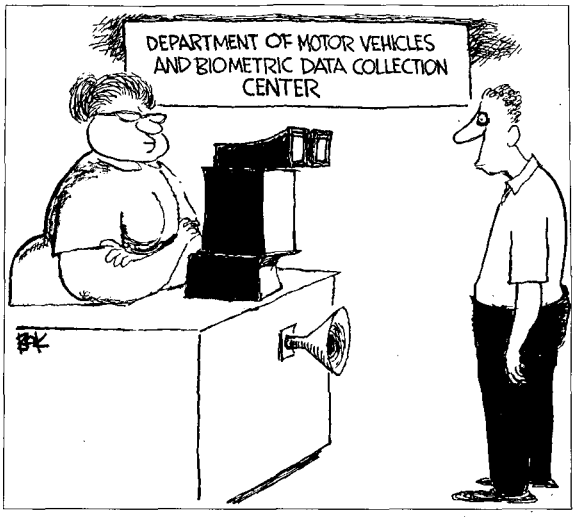
Retina Scans All Around

By Stuart Anderson

Reforming another short-sighted federal proposal

ONCE AGAIN POLITICIANS ARE proposing timid, half-way solutions when sweeping changes are in order. Creating a national computer database of all Americans to allow the government to monitor every employer's hiring decisions via modem clearly won't go far enough to stop the hordes of illegal aliens nightly stampeding across our borders.



Opponents of the database say the system will not work because illegal aliens could use fraudulent documents to get their names and fake Social Security numbers into the computer, which would make them appear eligible to work when an employer checks their names with the government. That's why Sen. Dianne Feinstein (D-Calif.) astutely inserted into Sen. Alan Simpson's (R-Wyo.) immigration bill a provision to create a "birth certificate of every person born in the United States [to be] verified as pertaining to a particular person at an age no older than 16...and [that] would be personalized by the addition of a fingerprint or other biometric data."

Feinstein wrote in *Roll Call* (May 22, 1995) that a national ID card or birth certificate should carry the bearer's "unique voice, retina pattern, or fingerprint digitally encoded." Here is where the Senate legislation doesn't go far enough. The term "biometric data" is so broad that it could include such things as sperm counts, which could replace retina scans as the preferred method of identification once lobbyists for certain industries, such as paper cup manufacturers, get their hands on the legislation. Retina scans clearly should be the identifier of choice.

Retina scans are ideal because they can be combined with the other outstanding reform idea in Congress this session: the V-chip. Under legislation sponsored by Sen. Kent Conrad (D-N.D.), manufacturers would be required to insert the V-chip into every TV set sold in America. A ratings board, voluntarily mandated by Congress, would decide which programs deserve the "V" rating. The idea is to give a friendly helping hand not only to parents but to sociopaths who explicitly seek out violent programming but find the *TV Guide* description of shows often vague.

The combined Retina Scan/V-chip would work as follows: A government computer that includes people's retina scans would be linked with the V-chip technology. Congress would then require that the V-chip in the television be equipped with powerful retina-scan lasers that could shoot multiple rays across the room to zap the eyes of kids watching violent TV programs. The lasers must be capable of penetrating curtains, doors, and windows (in case the child attempts to peep into a neighbor's house to watch a violent show). The children would be stunned only temporarily—long enough, however, for adults to step in and prevent viewing. The stunning should help deter future viewing, with the severity of the laser to be set annually by Congress.

A critic might say that this is fine to protect children while they are in the United States, but what about while they are traveling abroad? While restricting foreign travel to those 18 or over may be a good idea, a simpler solution would be to use the threat of trade sanctions to force other countries to adopt the retina-scan-laser TV standard. Free trade has to be fair, and this would ensure that no American child would inadvertently see a violent image on TV while traveling in a foreign nation.

If trade embargoes against other countries did not convince them to use the lasers, this would be yet another argument against immigration—without the retina-scan technology in TV sets, immigrant children who had seen violent shows in their native lands would be able to describe them to American kids during recess.

TO MAKE THE NATIONAL COMPUTER DATABASE work, a national ID card that includes our "Social Security numbers and biometric data," as Rep. Bill McCollum (R-Fla.) has advocated, must involve all adults and not just children. Moreover, collecting fingerprints, scanning retinas, drawing blood, extracting sperm, and gathering urine from all Americans will not work if it is done in a random, haphazard manner. That is why it should be made part of every American's patriotic duty, like voting.

I propose we establish National Citizen Identification Day, to be held on election day in even-numbered years. On this day, parents could go with their children to be registered with the government and have the necessary bodily fluids extracted and

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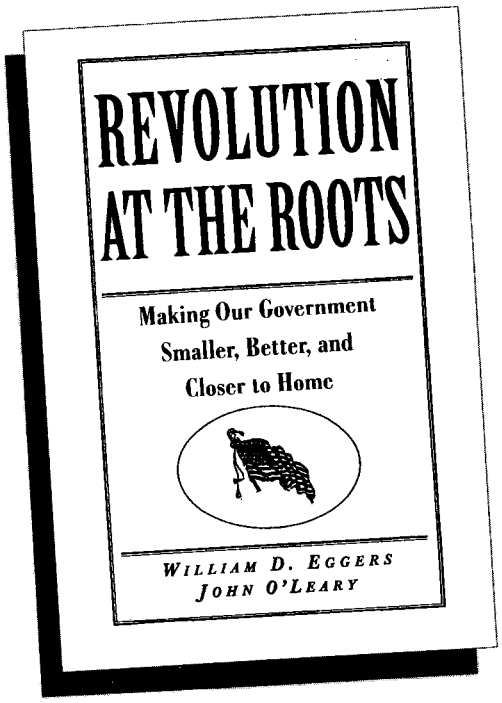

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the appropriate parts of their anatomy scanned. While the local polling station is the natural place, other sensible locations for swift and prompt service would be the Department of Motor Vehicles or the Post Office.

In lieu of election day, another national holiday could be selected, such as Christmas. The procedures would be popular politically and could even become part of our national culture, complete with their own seasonal songs: (Sing to the tune of "O Christmas Tree")

This is another argument against immigration—without the retina-scan technology in TV sets, immigrant children who had seen violent shows in their native lands would be able to describe them to American kids during recess.

O Retina Scans, O Retina Scans
In Congress you have many fans.
O Retina Scans, O Retina Scans
You help us catch illegal aliens.

If Congress acts quickly on the Retina Scan/V-chip, which will solve our illegal immigration, TV violence, trade, and litter problems, it could be used in time for the fall TV season, when we might discover that one of the actors on that violent program *Melrose Place* is not even eligible to work in this country. Truthfully, I can't understand why anyone would oppose retina scans. After all, why should you be so concerned about the government keeping an eye on you and your retina? Did you get your eyes from another country? ®

Stuart Anderson is policy director of the Alexis de Tocqueville Institution in Arlington, Va.

Goodbye True World

By Nick Gillespie

The Truth About Truth: De-Confusing and Re-Constructing the Postmodern World, edited by Walter Truett Anderson, New York: Tarcher/Putnam, 272 pages, $13.95

SOME PEOPLE FALL INTO CONVERSATIONAL catatonia at the mere mention of the voguish—and vague—term *postmodernism*. Others, seized by an intellectual version of Tourette's Syndrome, start barking and cursing wildly. Such reactions are understandable—why grapple with what might turn out to be only the latest academic version of the pet rock?—but also unfortunate. For just as we were all socialists once, all Keynsians once, and all Brooklyn Dodger fans once, we are all postmodernists now.

The negative reactions to postmodernism are unfortunate for another reason, too: Although there are important differences, a good deal of postmodern thought accords very well with the hard- and soft-core libertarian writings of people such as F. A. Hayek and Karl Popper. Hayek and Popper stressed time and again the provisional, ongoing nature of our knowledge of ourselves and our world. "We know a great deal," wrote Popper, but "our ignorance is sobering and boundless. With each step forward, with each problem which we solve, we not only discover new and unsolved problems, but we also discover that where we believed that we were standing on firm and safe ground, all things are, in truth, insecure and in a state of flux." That sort of epistemological modesty is fundamental to their arguments against widescale social engineering and utopian planning.

Postmodernism similarly complicates explanatory systems. As Walter Truett Anderson writes in the epilogue to *The Truth About Truth*, "The quest for universal understanding—and the work of creating a global culture—goes on....What's happening now is in many ways similar to what happened a few centuries ago when people were exploring the planet: They kept discovering they lived in a wider world and re-drawing their maps....The world that had once been flat became round, and then it became larger, and old worldviews were discarded regularly."

bell hooks: She rejects the idea of a black "essence," focusing instead on how black identity is constructed through social and cultural forces.

The postmodern willingness to walk around an object of study and check it out from different angles is often caricatured as cultural relativism at its worst. The charge doesn't really stick, though. "Nobody really believes that everything is equal, because the human mind doesn't work that way," says Anderson. "Whatever else it is doing, it is always tirelessly, relentlessly evaluating." Postmodernism's recognition of the limits of knowledge can be a useful ally in battling what Hayek once called the "engineering type of mind."

The Truth About Truth, featuring selections from more than 30 authors, including Umberto Eco, Michel Foucault, Jean Baudrillard, Jacques Derrida, Richard Rorty, bell hooks, and Václav Havel, suggests the range of interests and various approaches of postmodernism. The collection is a good introduction to the topic, and Anderson's annotations explain and enliven a book that could easily have been duller than a telephone directory and more ponderous than a rock opera. *Truth* is a serious matter, but Anderson appreciates irony, too; hence, the inclusion of sociologist Stephen Katz's "How to Speak and Write Postmodern," an essay that originally appeared on the Internet several years back. "Postmodern language requires that one uses play, parody and indeterminacy as critical techniques," writes Katz. "Often this is quite a difficult requirement, so obscurity is a well-acknowledged substitute."

SO WHAT EXACTLY IS POSTMODERNISM? IN the postscript to *The Name of the Rose*, reprinted in *Truth*, Umberto Eco has "the impression that [the adjective *postmodern*] is applied...to anything the user of the term happens to like." Or, alternatively, anything the user scorns. Postmodernism, like pornography, is notoriously difficult to define but people tend to know it when they see it (and, again as with pornography, there seem to be different strokes for different folks).

While difficult to nail down with any great precision, postmodernism can be seen as a critique of the ideas and activities associated with the "modern" period inaugurated by the Enlightenment, the broad-based intellectual movement of the 17th and 18th centuries that included such figures as Bacon and Descartes. (Postmodern art, a reaction to the aesthetic modernism of the early 20th century, is a related but slightly different kettle of fish.) Generally speaking, the Enlightenment countered tradition and superstition with reason and systematic observation, believing that a universal culture based on rational principles would eventually usher in a utopian age.

One of the reasons why postmodernism can only be defined loosely is that the Enlightenment itself was hardly a monolithic program. Writing in 1963, when postmodernism was hardly a twinkle in

anyone's eye, Hayek observed: "To lump together under the name of 'enlightenment'...the French philosophers from Voltaire to Condorcet on the one hand, and the Scottish and English thinkers from Mandeville through Hume and Adam Smith to Edmund Burke on the other, is to gloss over differences which for the influence of these men on the next century were much more important than any superficial similarity which may exist." There's no question that Bacon and Descartes bore many offspring, some of whom looked like neither parent.

The worst tendency of Enlightenment thought—at least from a libertarian perspective—was the drive to apply "scientific" principles to human society. As the Marquis de Condorcet put it in *The Perfectibility of Man* (written, ironically, but not coincidentally, during the French Revolution), "The sole foundation for belief in the natural sciences is this idea, that the general laws directing the phenomena of the universe, known or unknown, are necessary and constant. Why should this principle be any less true for the development of the intellectual and moral faculties of man than for other operations of nature?...Our hopes for the future condition of the human race can be subsumed under three important heads: the abolition of inequality between nations, the progress of equality within each nation, and the true perfection of mankind."

Underlying such an attitude is the assumption that all individuals experience the world in the same way and that ultimate "truths"—both scientific and moral—are unconditional and unchanging. "This is the character of truth," wrote Voltaire in 1750, "it is of all time, it is for all men, it has only to show itself to be recognized, and one cannot argue against it."

Postmodernists deign to argue precisely this point, often in interesting ways. "There exists no pure, uninterpreted datum," writes Danish psychologist Steiner Kvale in *TTAT*, "all facts embody theory." Hence, there are no simple—or final—truths that exist independent of the people, the cultures, and the languages that produce them. The variety of past, present, and future human experience always manages to escape our ability to comprehend it fully. "Skeptical postmodernists" (to use Pauline Marie Rosenau's terms) emphasize the negative potential of fragmentation, disintegration, and chaos, while "affirmatives" embrace the possibilities inherent in uncertainty.

CRITICS OF POSTMODERNISM—INCLUDING hard-core conservatives such as Gertrude Himmelfarb and diehard leftists such as Frederick Jameson—argue that such sentiments, whether shot through with optimism or pessimism, necessarily result in relativistic nihilism or theoretical autism. Once we turn away from the North Star of objective reality or historical necessity and steer toward the idea that consciousness is largely a subjective matter, say critics, there is nothing to keep us from becoming lost in a destructive solipsism, like Kurtz in *Heart of Darkness*: "He had kicked himself loose of the earth. ...Being alone in the wilderness, [his soul] had looked within itself, and by Heavens! I tell you, it had gone mad."

The worst tendency of Enlightenment thought was the drive to apply "scientific" principles to human society.

And, indeed, some elements of postmodernism seem less interested in unfettered inquiry than in scoring ideological points. Michel Foucault, for instance, at times reduced all "discourses" and "disciplines" to power structures, to means of controlling and subordinating thought to institutional power. While there is a certain strength in a broad levelling of differences, such an approach ignores the varied methods and aims applying to, say, scientific writing and literary scholarship. Two of postmodernism's marquee players, the two Jacques (Derrida and Lacan), seem to argue that linguistic structures essentially dictate the way we perceive "reality." While such analysis rightly calls attention to how particular words create specific meanings, it ignores voluminous research that suggests thought and perception precede and exist independent of language. And many postmodernists believe wholeheartedly in the "social construction of reality," the doctrine that all meaningful differences among humans are solely determined by cultural factors and hence, infinitely manipulable.

But the postmodern impulse needn't necessarily result in anything like relativistic nihilism. At its best, it leads to a more critical—if more compromised—understanding of the world, one that allows for more than one definition of truth. In an unfortunately abridged selection from *The Crooked Timber of Humanity*, Isaiah Berlin, drawing on the thought of Giambattista Vico and Johann Gottfried Herder, sketches out the particulars of a pluralistic world that is neither dogmatic nor disintegrated.

"Communities may resemble each other in many respects, but the Greeks differ from Lutheran Germans, the Chinese differ from both; what they strive after and what they fear or worship are scarcely ever similar....[This] is not relativism," writes Berlin. " 'I prefer coffee, you prefer champagne. We have different tastes. There is no more to be said.' That is relativism. But...what I should describe as pluralism...is the conception that there are many different ends that men may seek and still be fully rational, fully men, capable of understanding each other and sympathising and deriving light from each other, as we derive it from reading Plato or novels of medieval Japan—worlds, outlooks, very remote from our own." Although Berlin is speaking of a pluralism among cultures, his ideas can be logically extended to a discussion of pluralism within cultures—or of individuals across cultures—as well.

The end result of what French philosopher Jean-François Lyotard has famously called "incredulity towards meta-narratives"—suspicion regarding grand theories that claim to explain every cough, hiccup, and burp in human and natural history—is certainly all to the good. For even

as we recognize that Enlightenment thought still largely informs our understanding of natural and social sciences—as well as individual rights and representative government—we should acknowledge that, as Hayek put it, the period's "naive" or "social rationalism" wrought immeasurable harm by assuming "that man in the full knowledge of what he was doing should deliberately create such a civilization and social order as the process of his reason enabled him to design....It is from this kind of social rationalism or constructivism that all modern socialism, planning and totalitarianism derives."

In a sense, postmodernism merely insists that we constantly explain ourselves—and our explanations of ourselves. "Seeing truth as made, not found, doesn't mean deciding there is nothing 'out there,'" writes Anderson. "It means understanding that all our stories about what's out there—all our scientific facts, our religious teachings, our society's beliefs, even our personal perceptions—are the products of a highly creative interaction between human minds and the cosmos."

Such ongoing interrogation is in fact part and parcel of the Enlightenment tradition itself. Although postmodernism is often packaged (by admirers and detractors alike) as a radical, revolutionary break with the past, as with many "new and improved" products, those claims are plainly exaggerated. "Our age," observed Kant in *Critique of Pure Reason*, "is in especial degree, the age of criticism, and to criticism everything must submit." And, as S. S. Wolin wrote of Kant's philosophical flipside, David Hume, he "turned against the enlightenment its own weapons," looking "to whittle down the claims of reason by the use of rational analysis." This, then, may be the ultimate postmodern irony: In relentlessly questioning the whys and wherefores of the Enlightenment, its aims, methods, and motives, postmodernism may be stumbling closer to the real thing—whatever that might be.

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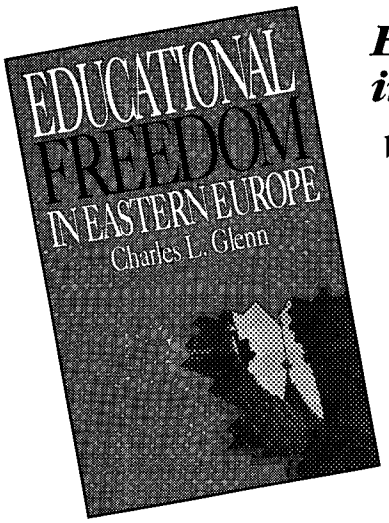

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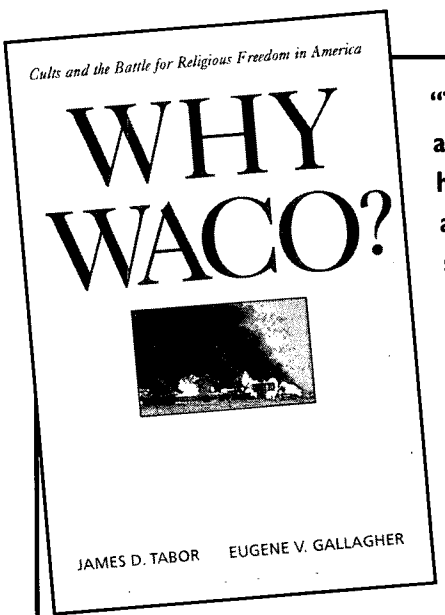

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Aid and Discomfort

By Amy L. Sherman

Perpetuating Poverty: The World Bank, the IMF, and the Developing World, edited by Doug Bandow and Ian Vásquez, Washington, D.C.: The Cato Institute, 359 pages, $15.95

While Americans show little enthusiasm for foreign aid in general, they often demand humanitarian action in the face of human tragedies.

MY NURSING-STUDENT FRIEND RECENTLY completed a home health visit to an indigent, elderly couple in rural Virginia. Wheelchair-bound and suffering from numerous medical ailments, the couple had lived for years in their cramped, three-room home without running water, indoor plumbing, or reliable heating. Several months ago a variety of Virginia government agencies cooperated in building a small bathroom onto their house. It gets little use. You must navigate four stairs to enter it; once inside there is barely enough room for a person—much less a wheelchair—to turn around; and neither the husband nor wife can clamber into or out of the traditional tub. It's a mini–white elephant testifying to government aid gone awry.

In the field of foreign aid, the white elephants tend to be much larger, such as a meagerly producing fish pond in Malawi that was situated next door to a bird sanctuary and massive transmigration schemes in Indonesia that have exacerbated ethnic conflicts. In his much-discussed 1989 book, *Lords of Poverty*, leftist journalist Graham Hancock told numerous stories of such projects created world-wide by sometimes blundering, sometimes treacherous applications of foreign aid. His scathing book flogged the World Bank, International Monetary Fund, and U.S. Agency for International Development (USAID) for the same sins committed by the Blue Ridge bureaucrats involved in the bathroom fiasco: wastefulness, use of inappropriate technologies, and blind disregard for the opinions of the actual recipients of their "assistance."

A new critique of foreign aid, this time from the right, largely corroborates these now-familiar charges against the aid bureaucracy, but extends and deepens the analysis in helpful ways. *Perpetuating Poverty*—a tightly edited collection of 16 essays by such notables as Nicholas Eberstadt, George B. N. Ayittey, Paul Craig Roberts, James Bovard, and William McGurn—is probably the most important, and damning, assessment of aid policy to date because it asks and answers questions more fundamental than those raised in previous evaluations.

Anthologies often make for tiresome, incoherent reading, but editors Doug Bandow and Ian Vásquez have gathered well-crafted selections sharing several common themes. The contributors agree, first, that massive wealth transfers from rich to poor countries (the World Bank has channeled $300 billion since the early 1950s) have not worked. Latin America is mired in $430 billion of debt; per capita incomes in sub-Saharan Africa are lower now than two decades ago, and, Bandow writes, "According to the United Nations, the 47 poorest countries in the underdeveloped world, many of them heavy aid recipients, have experienced no growth in recent years and are expected to show continuing declines in per capita incomes." Employing numerous examples from Africa, Latin America, and South Asia, the contributors argue persuasively that aid has failed to encourage sustainable economic growth and raise living standards in the less-developed countries (LDCs).

But the contributors go further: Not only has aid not worked, it has actually exacerbated the problems it intended to alleviate. Aid, they argue, has entrenched regimes with misguided, statist economic policies and dubious human rights records. In addition, "by ameliorating the symptoms of economic collapse," multilateral aid has permitted recipients to postpone necessary market-oriented reforms.

The authors also agree that the real problem with foreign aid is not just that particular grants and loans have been used foolishly, creating the nightmares and gross inefficiencies Hancock chronicled. The problem is that the whole mentality of aid is based on an erroneous understanding of the reasons for underdevelopment and the causes of economic growth. The World Bank et al., the authors argue repeatedly, see capital and technology transfer as the key to growth, and fail to appreciate the economic potential of ordinary Third World citizens operating in free markets.

Experts from the aid agencies too often consider the state the main engine of development and favor government planning. Even in the pro-market, post–Cold War period, the contributors assert, the agencies merely mouth free market rhetoric and posture as advocates of economic liberalization while continuing to lend to *governments* rather than to the private sector. They also regularly fail to punish aid recipients who abandon market-oriented reforms.

As Bovard puts it: "[E]very time the [World] Bank loudly praises the marketplace, it silently damns its own record. The Bank, more than any other international institution, is responsible for the Third World's rush to socialism and economic collapse. While the Bank has been very effective at expanding government control of Third World economies, it has unfortunately been extremely ineffective at encouraging private-sector-oriented re-

form."

The contributors to *Perpetuating Poverty* believe that the causes of persistent poverty in the Third World lie principally within the LDCs themselves—in their statist economies and mercantilist regulatory systems, which shut the poor out of the formal economy—rather than in the external conditions of the global economy. Thus these analysts think market-oriented reforms within the LDCs are urgent and increased international wealth transfers are irrelevant if not harmful. (Their emphasis on faulty domestic policies in the LDCs does not, importantly, lead them to neglect the very real problems of industrialized countries' protectionism. The last quarter of the book is reserved for arguments in favor of trade liberalization and foreign private investment by the North to spur growth in the South.)

Perpetuating Poverty doesn't merely say that the foreign aid bureaucracy's diagnosis of and prescription for Third World ills is fundamentally flawed. It argues that the foreign-aid establishment doesn't seem to care that its policies don't work. Citing evaluations published by the agencies themselves, various contributors show that the institutions are aware of their own dismal performance records. In one report, cited by Bovard, the World Bank admitted that 75 percent of its agricultural projects in Africa were failures.

NONETHELESS, THE AGENCIES FAIL TO adjust their lending behavior accordingly; indeed, their usual response is to *increase* aid. Nicholas Eberstadt offers a particularly eloquent explanation for this phenomenon: "To a disturbing degree, Western bilateral and multilateral aid agencies treat objectives and strategy as peripheral to the real business at hand. Throughout the so-called donor community there is a pervasive tendency to equate performance with 'moving money': to judge aid not by the effectiveness with which it is spent, but simply by the *fact* that it is spent."

In similar comments, contributor James B. Burnham identifies a fundamental flaw in aid policy that other analysts sometimes miss: the disjunction between the multilaterals' constituted purposes, which are economic, and their actual underlying objectives, which are political and diplomatic. Since much aid is "treated as a useful lever for achieving broader diplomatic objectives," the recipient's economic performance can become a secondary consideration. Until this incongruity is widely acknowledged, discussions about the appropriate role of foreign aid (if there is to be any role at all) are likely to bear little fruit.

Because of the international crises so familiar today, aid policy is being shaped more by global circumstances than by the deliberate action of policy makers. This reactive character of aid policy is particularly ironic because the foreign-aid establishment has been more introspective in the past few years than usual. For example, last summer the IMF and World Bank celebrated their 50th anniversary and so have been indulging, as *The Economist* put it, "in a prolonged bout of navel-gazing." Such reflection has not produced much innovative thinking: One World Bank official, when asked what he thought would follow the bank's 50th anniversary, replied, "Well, the 51st anniversary."

The foreign-aid establishment doesn't seem to care that its policies don't work. The World Bank admitted that 75 percent of its agricultural projects in Africa were failures.

Like the multilaterals, USAID has been rethinking its role. In November 1993, the Clinton administration unveiled the agency's "entirely new" foreign-aid strategy. Under it, aid is to be directed to specific *objectives*, such as environmentally friendly development, democracy, and growth through trade and investment, rather than to specific *countries*. This is innovative thinking, but unfortunately it isn't being practiced: The $13.7 billion approved by the Senate for 1994 will go mainly to the same familiar clients.

USAID's new idea, though, is a step in the right direction because, if actually implemented, it could mean major reforms in aid policy that take into account the criticisms raised in *Perpetuating Poverty*. For example, the book's contributors argue repeatedly that a major problem with aid is that it goes to LDC governments instead of their economically productive citizens. Since one of the stated objectives of the Clinton foreign-aid policy is stimulating market-oriented economic growth, and since aid is supposed to be disbursed to further specific objectives rather than to placate client states, the way has been paved for non-governmental entities to receive assistance. *Perpetuating Poverty* could have taken up several lines of inquiry suggested by the Clinton reforms, such as how best to channel aid to the LDCs through private voluntary organizations and domestic businesses in the poor countries.

THE CONTRIBUTORS TO *PERPETUATING Poverty* want to end foreign aid as we know it. Though their case is persuasive, such an outcome is unlikely for at least two reasons. First, while opinion polls regularly indicate that Americans show little enthusiasm for foreign aid in general, Americans nevertheless often demand humanitarian action in the face of human tragedies. (Rwanda comes immediately to mind, and images of the Somalian and Ethiopian famines aren't far behind.) Many Americans think foreign aid is an expression of humanitarianism, because they are usually told that aid is essentially economic and meant to alleviate Third World distress. *Perpetuating Poverty* would have been strengthened by a serious consideration of the merits of *relief*, as opposed to *development* assistance, and by the recognition that many citizens think that terminating relief aid is undesirable.

Still, it's true that the statist development model on which foreign aid is currently based is fundamentally flawed. The

lessons of the past four decades of development experience in the LDCs clearly demonstrate that market-friendly, outward-looking policies lead to growth while state-centered approaches fail. But the contributors ought to have taken up an additional question: What role, if any, is there for foreign assistance if the multilaterals embrace in practice as well as in rhetoric the neoliberal development model *Perpetuating Poverty* favors? Since ending all aid doesn't seem immediately feasible, such a question about the transformation of aid is crucial.

The book could have included, for example, an essay discussing the merits of aid to social investment funds which permit LDCs undergoing market-oriented reforms to cushion the pains of structural adjustment on the poor. It also could have assessed the role that foreign aid played in the economic success stories of the East Asian tigers (Singapore, South Korea, Taiwan, and Hong Kong) as well as newly industrializing countries such as Chile, Malaysia, Indonesia, and Thailand. While those countries have received significantly less aid than many LDCs, they nevertheless have received some, and it would be helpful to understand how such assistance helped or hindered them in their adoption of pro-market, neoliberal development strategies.

Finally, given the mixed (both diplomatic and economic) objectives of foreign-aid policy, it would have been useful for the contributors to have assessed the individual performance of each of the three components of foreign aid—security assistance, development assistance, and humanitarian assistance.

Despite these oversights, *Perpetuating Poverty* is a powerful book that should encourage policy makers to reevaluate the very phrase "foreign *aid*." Such language assumes that concessionary wealth transfers from the developed to the underdeveloped countries actually assist the latter in making economic progress. *Perpetuating Poverty* relentlessly explains why this is often not so. With that matter settled, the way is now clear for an equally rigorous, radical rethinking of aid policy that could transform "foreign assistance" into something that actually serves the poor rather than prolongs their agony. ®

Amy L. Sherman is author of Preferential Option: A Christian and Neoliberal Strategy for Latin America's Poor *(Eerdmans) and a visiting fellow of the Ethics and Public Policy Center.*

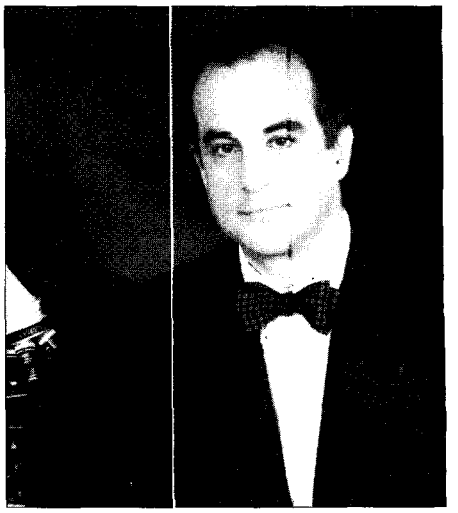
Pinch Me

By Jacob Sullum

For Smokers Only: How Smokeless Tobacco Can Save Your Life, by Brad Rodu, New York: Sulzburger & Graham, 210 pages, $11.99 paper

IN 1972, CONSUMERS UNION PUBLISHED a book called *Licit and Illicit Drugs* that devoted several chapters to the history and hazards of tobacco. The authors were troubled that smoking had declined only slightly in the wake of the surgeon general's 1964 report. They concluded that public health officials had underestimated nicotine's grip on smokers. "[E]fforts should be made to popularize ways of delivering frequent doses of nicotine to addicts without filling their lungs with smoke," they wrote. Among other options, they suggested that people concerned about the health effects of smoking might seek to "popularize chewing tobacco and snuff."

That recommendation was conspicuously absent from *The Facts About Drug Use*, a 1991 Consumers Union book. Indeed, the authors seemed worried by the rising popularity of smokeless tobacco,



Brad Rodu: Against anti-tobacco zealots, he claims, "Smokeless tobacco use has risks, but (it) is unquestionably much safer than cigarette smoking."

especially among adolescents. "The evidence is compelling that smokeless tobacco produces nicotine levels in the body comparable to those produced by smoking and carries additional risk of cancer of the mouth," they said, giving no indication that snuff and chewing tobacco might pose less of a health hazard than cigarettes.

This change of heart reflects the current attitude of the anti-smoking establishment. In 1986, Surgeon General C. Everett Koop issued a report that condemned smokeless tobacco as carcinogenic and addictive. He warned against "the tragic mistake of replacing the ashtray with the spittoon." Congress followed up by banning broadcast ads for smokeless tobacco and requiring warning labels. One of those labels sums up the prevailing view, echoed by publichealth officials, anti-smoking activists, self-help books, and newspaper columnists: Smokeless tobacco "is not a safe alternative to cigarettes."

But as Brad Rodu observes in *For Smokers Only*, that advice is hardly helpful to a smoker who is thinking about switching to snuff or chewing tobacco. "In their zeal to convince the American public that tobacco is inherently evil, the anti-tobacco zealots...have created the illusion that all forms of tobacco produce the same health problems," he writes. "Smokeless tobacco use has risks, but [it] is unques-

tionably much safer, resulting in far fewer and significantly less serious health risks which are more easily managed, than cigarette smoking."

RODU, CHAIRMAN OF THE ORAL PATHOLogy department at the University of Alabama at Birmingham, notes that oral cancer is the only major, well-established health risk associated with the use of smokeless tobacco (and even that disease is twice as common among smokers). A 1981 study published in *The New England Journal of Medicine* found an oral-cancer rate of 26 per 100,000 among long-term users of smokeless tobacco, compared to 6 per 100,000 among nonusers. Noting that the survival rate for oral cancer is 50 percent, Rodu estimates that "*if all 46 million smokers used smokeless tobacco instead, the United States would see, at worst, 6,000 deaths from oral cancer [a year], versus the current 419,000 deaths from smoking-related cancers, heart problems, and lung disease.*" (Emphasis in original.) By this measure, he concludes, smokeless tobacco is 98 percent safer than smoking. Rodu and his colleagues estimate that life expectancy for a 35-year-old smokeless-tobacco user is 80.9, virtually the same as for nonusers. The average 35-year-old smoker, by contrast, lives to be 73.1.

Rodu's message to smokers is straightforward: You can enjoy tobacco flavor and nicotine at a fraction of the risk, without the pesky smoke. He reassures the wary that today's moist snuff, placed between the cheek and gum, does not produce unsightly bulges or large quantities of saliva. It can be enjoyed discreetly at work or play, even where smoking is banned, and no one need ever know. Unlike nicotine gum or patches—which, Rodu notes, require a prescription, are relatively expensive, and have modest success rates—switching to smokeless tobacco is not aimed at weaning smokers from tobacco. "This book will make denial of smoking's dangers impossible," he writes, "but it does not deny the smoker's pursuit of pleasure. You can have your tobacco and enjoy it too."

Rodu compares smokers to heroin addicts and smokeless tobacco to methadone. "Just as heroin addicts get treatment with methadone maintenance programs... we must be bold enough to offer smokeless tobacco (a safer, more acceptable delivery system for nicotine) to millions of cigarette smokers," he writes. "The smokeless tobacco solution, like methadone maintenance, is scientifically sound but will generate a lot of controversy based entirely on inappropriate and condescending attitudes and beliefs." Indeed, the reaction of the anti-smoking establishment to Rodu's message has been reminiscent of the hard-line drug warrior's attitude toward "harm reduction" measures such as methadone maintenance, the distribution of clean needles, and honest

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drug education.

"To say that one form of tobacco is safer than the other at this point in the debate is just irresponsible," Greg Connolly, a spokesman for the American Cancer Society and the American Dental Association, told the Associated Press after Rodu discussed his ideas in medical journals and on television last year. "Tobacco is tobacco....It's like telling someone to jump from the fifth floor instead of the 10th floor." The oral surgeons' association preferred a different analogy: "Suggesting this switch is like telling someone to use a rifle instead of an Uzi."

Rodu, who speculates that "the antitobacco crusade has entered a stage where scientific facts are simply ignored as irrelevant," was clearly shaken by "the strong emotional reaction that the smokeless tobacco solution elicits from tobacco crusaders." He emphasizes that "smokeless tobacco should only provide a viable and comparatively safe *damage control measure* for the current and last generation of nicotine addicts. Forty years or so from now I hope there are no tobacco users left on the planet."

Thus Rodu, like his critics, wants not only a smoke-free society but a tobacco-free world—though he generally opposes using coercive measures to achieve that goal. He acknowledges that smokers get pleasure—and not just withdrawal-symptom relief—from cigarettes. But he does not allow for the possibility that someone could rationally accept the risks of smoking (including the difficulty of quitting) in exchange for the benefits. And he insists that even the relatively small risks posed by snuff are acceptable only in comparison to the hazards of smoking.

For Rodu, it seems, tobacco is fundamentally different from other products that consumers are free to take or leave, because it is addictive. Nicotine affects the body in such a way that smokers who try to quit often experience cravings, weight gain, headaches, anxiety, and other unpleasant effects. Rodu's "smokeless tobacco solution" is aimed precisely at those smokers who are deterred by such costs. But although he sometimes describes these individuals as "unable" to give up smoking, it would be more accurate to say that they were unwilling to do so, given the costs involved. As Rodu notes, about 44 million smokers have managed to give up the habit, typically on their own.

Rodu's tendency to view addiction as a chemical compulsion ultimately undermines his opposition to coercive anti-smoking measures. "I would agree completely that the use of tobacco by adults is a freedom of choice issue," he writes. "I am concerned here with the 46 million American adults who are addicted to tobacco, regardless of how they became imprisoned. Once an individual is addicted, where is his or her freedom of choice?" If smokers are literally unable to stop, if nicotine has robbed them of their will, it is not hard to justify the sort of prohibitionist schemes—such as FDA Commissioner David Kessler's plan to forcibly "detoxify" the nation's smokers by gradually reducing nicotine levels in cigarettes —that Rodu decries.

STILL, RODU IS REFRESHINGLY SKEPTICAL of anti-smoking dogma, even on the issue of addiction. He pokes fun at the notion, promoted with a straight face by anti-smoking activists and trial lawyers, that cigarette makers have been concealing the fact that tobacco contains an addictive drug from an unwary public. "Nicotine addiction is no deep dark secret recently blown out of hiding," he writes. The addictive potential of tobacco has been common knowledge for centuries. Nicotine was first chemically purified in 1828, and experiments in the early 1940s confirmed that it relieved smokers' craving for cigarettes. By the 1950s, nicotine addiction was being discussed in books aimed at the general public, and thousands of research articles on the topic were published during the '60s and '70s, when the tobacco companies were supposedly working so hard to suppress the truth.

Similarly, Rodu demonstrates the vacuity of complaints that tobacco companies "manipulate" nicotine levels in cigarettes. "Cigarettes are blended from several different strains of tobacco," he

writes. "Thus, it is conceivable that cigarette manufacturers adjust the nicotine concentration to achieve consistency in taste—[in] which nicotine plays an important role. Even if the amount of nicotine in cigarette tobacco is artificially modified, you cannot deny that a Marlboro smoker deserves the same product uniformity as a McDonald's, Pizza Hut, or Coca-Cola customer." As for reports that Brown & Williamson developed a high-nicotine tobacco plant, Rodu notes that people genuinely concerned about the health of smokers should welcome such innovation. Smokers of high-nicotine, low-tar cigarettes (like smokers of high-potency marijuana) would tend to absorb lower levels of toxins while achieving the effect they desire.

Rodu also questions the received wisdom about the hazards of environmental tobacco smoke, noting that the evidence is open to question and that the Environmental Protection Agency has been criticized for prejudging the issue. But he adds that fears about ETS, well grounded or not, are widespread, feeding hostility against smokers and driving the movement to ban smoking in restaurants and workplaces.

Although Rodu pulls no punches in describing the hazards of smoking, he criticizes the idea that smokers impose huge costs "on society" because of the illnesses to which they are prone. After all, everybody dies of something. The smoker who drops dead at 45 from a heart attack will not live to develop Alzheimer's—or collect Social Security checks. When you look at the long-term savings as well as the short-term costs, Rodu notes, "the excise taxes on cigarettes more than compensate for the external costs that smokers impose on society's nonsmokers." He is not impressed by popular support for raising tobacco taxes. "Polls currently indicate that Americans favor increasing excise taxes on cigarettes by a margin of 3 to 1, which should surprise no one," he writes. "That's the ratio of nonsmokers to smokers."

Rodu's common sense and intellectual honesty are especially striking in light of his strong anti-smoking views. He questions claims ("secondhand smoke kills," "smokers are a burden on society") that he considers shaky or erroneous, even though they would reinforce his argument for switching from cigarettes to smokeless tobacco. That kind of rigor is rare in the anti-smoking movement, which could use a few more heretics. ®

Senior Editor Jacob Sullum (JSullum@aol.com) is working on a book about the American anti-smoking movement for The Free Press.

War and Peace

By Paul A. Rahe

On the Origins of War and the Preservation of Peace, by Donald Kagan, New York: Doubleday, 606 pages, $30.00

TWENTY-FIVE YEARS AGO, SHORTLY after shifting from Cornell to Yale University, Donald Kagan launched a new lecture course, "Historical Studies in the Origins of War." Each fall, he would introduce hundreds of freshmen and sophomores to Greek history; and when neither on leave nor saddled with administrative duties as department chair or Yale College dean, he would invite a host of undergraduates to devote the spring to reconsidering the course of events that led to the Peloponnesian War, World War I, the Second Punic War, World War II, and the Cuban Missile Crisis. By now, the teaching assistants who have run sections for Kagan before wandering off to take up assistant

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professorships at campuses all over the country are many (I was one two decades ago), and they are greatly outnumbered by the Yale alumni who once chose to wrestle with the complex set of issues that Kagan raised.

In *On the Origins of War and the Preservation of Peace*, Kagan, now Bass Professor of Western Civilization at Yale, makes it possible for readers throughout the world to share what was for many years an essential part of the Yale experience. He addresses the same four wars and the missile crisis, and he has apparently found a large audience. The book has been featured by the History Book Club and offered by the Book of the Month Club; its author has been interviewed on C-SPAN's *Booknotes*; and he has been invited to address the CEOs of the *Fortune* 500. Sales have been brisk.

It is easy to see why. Kagan's writing is clear; his book is well adorned with maps; his topic is one of permanent importance; and his presumptions are quite sensible. Nowhere does he suggest that we can hope for a world without war, but neither does he succumb to fatalism. While acknowledging that we operate within constraints, he insists that statesmen frequently have real choices to make and that these choices can be made wisely or foolishly. Kagan stoutly resists both the social scientist's instinct to force dissimilar situations into a similar mold and the historian's proclivity for presuming that no two situations are genuinely comparable. While demonstrating that the devil is in the details, he makes analogies where appropriate, keeping his eyes open for that which is permanent in the human condition.

If there is one conclusion to be drawn from these carefully linked studies, it is that statesmanship matters. Kagan insists that, in the absence of careful management, the international system tends towards anarchy. The maintenance of peace requires the presence of a great power willing to devote its efforts to avoiding a general conflagration. This superintending entity must be a satisfied power: No country possessed of territorial ambitions or revolutionary intentions likely to bring it into conflict with other states can be trusted to serve as an honest broker. This state must be powerful: In the best of circumstances, it should hold the balance between contending rivals. At the very least, it should be clear to all concerned that its intervention on one side or another in a given conflict will make a real difference to the outcome. Finally, this country must be aware of the role that it is called on to play; its citizens must be willing to shoulder the burden; and it must be shrewdly led.

Kagan concludes that, when these conditions are absent, a general war will almost certainly be the result; and in the course of five discrete narratives, he indicates why this is so. Kagan's contention ought to be a sobering thought for Americans. The United States is the only satisfied power in today's world with the political, economic, and moral capital to play what he takes to be the requisite role, and we may now be inclined to presume that "a return to normalcy" means for us a withdrawal from the world and a massive reduction in armaments. This Kagan thinks exceedingly dangerous. As a consequence, his book ought to be read by every citizen willing seriously to ponder whither we are tending. It should be forcefed to Bill Clinton, to his Republican rivals, and to the leaders of both parties in the two houses of Congress—for if its author is right, we as a nation cannot afford to be wrong.

Donald Kagan: From his studies of past wars, the Yale professor concludes that peace requires the presence of a great power willing to devote its efforts to avoiding a general conflagration.

KENNNETH ABBOTT

AT THE BEGINNING AND THROUGHOUT THE book, Kagan emphasizes the first item on Thucydides' list of the three great concerns that influence political communities. While contemporary readers will not be surprised by the notion "that fear and interest move states to war," Kagan writes, it may seem strange to them that a "concern for honor should do so." Of course, he notes, "if we take honor to mean fame, glory, renown, or splendor, it may appear applicable only to an earlier time." If, on the other hand, "we understand its significance as deference, esteem, just due, regard, respect, or prestige we will find it an important motive of nations in the modern world as well."

Honor, Kagan insists, is "desirable in itself," but "it also has practical importance in the competition for power. When it is on the wane, so, too, is the power of the state losing it, and the reverse is also true. Power and honor have a reciprocal relationship." Above all else, an otherwise formidable state tends to lose prestige, and with it the capacity to accomplish its goals, when it is "seen to lack the will to use its material power." Kagan warns his readers that they "may be surprised by how small a role...considerations of practical utility and material gain, and even ambition for power itself, play in bringing on wars and how often some aspect of honor is decisive."

Such was the case with the Peloponnesian War. As Kagan tells the story, Thucydides was right in general and wrong in particular: This great conflict was by no means inevitable. Neither the Spartans nor the Athenians were intent on war. They had come to blows in the recent past, and neither side had proved able to eliminate or secure a decisive advantage over the other. There were circumstances that could encourage confrontation: Athens ruled a maritime empire, and Sparta was

a land power, which led and dominated the so-called Peloponnesian League. Instability within either alliance might tempt the other to intervene. But the Spartans, outnumbered as they were by a restive and troublesome servile population, were exceedingly reluctant to take risks; and Athens, which was the less vulnerable of the two, was led by Pericles, a sober and capable statesman graced with firsthand experience of the dangers that one subjected one's country to when one embarked on such a war.

In the event, Corinth, a maritime power that happened to be the most independent of Sparta's allies, became embroiled in a conflict in the Adriatic. The Athenians were drawn in when faced with the prospect that the Corinthians might conquer hitherto neutral Corcyra and, by bringing together under their control the second and third largest fleets in Greece, emerge as a threat to Athens on the sea. When the Athenians intervened to prevent the Corinthians from achieving this goal, the latter successfully pressed the Spartans for a declaration of war.

The Corinthians were driven chiefly by honor; the Spartans, by the fear that their alliance would come apart, by the conviction that war would in any case eventually come, and by the desire not to dishonor themselves by abandoning a longtime ally. Initially, the Athenians were concerned with their own safety. Under Pericles' leadership, they came to the defense of Corcyra but did so in an unprovocative manner. They blundered only when, in anger, out of a sense of honor, they retaliated against Megara for her participation in Corinth's Corcyraean adventure by imposing a trade embargo on that Spartan ally. By putting pressure on the very community that Athens had taken from Sparta at the beginning of the earlier war, Pericles touched a nerve, bringing Sparta into the conflict.

Pericles, though he failed in the end, is the hero of the piece, as he was in Kagan's *Pericles of Athens and the Birth of Democracy* (1991). But here he serves primarily as a foil for a figure who appears to have been an even greater man: Otto von Bismarck, the statesman most responsible for the formation of Germany.

As Kagan recounts the tale, Bismarck was a man who knew what could be done and what could not. After forging German unity, he recognized that further German expansion would unite the rest of Europe against the upstart power. He therefore presented his country to its neighbors as a saturated power intent on the preservation of peace, willing and able to serve as an honest broker. Having injured France by the seizure of Alsace-Lorraine, he sought at the same time to isolate that potentially revanchist power and to soothe its fears. Recognizing the danger that Russian ambitions might pose, he tried both the carrot and the stick, neither encouraging adventurism on Russia's part nor drawing

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so close to Austria-Hungary that Russia would be estranged. It was, as Kagan emphasizes, a bravura performance.

It ended when, after the death of Bismarck's patron Kaiser Wilhelm I, that fortunate monarch's grandson Wilhelm II asked for the great statesman's resignation. Under Wilhelm II, Germany embarked on a quest for power and glory. In the process, it needlessly alienated Russia; found itself forced to fall back on its alliance with Austria-Hungary; encouraged fear and revanchism in France; and built a fleet, for which it had no real need, that so threatened the British that they abandoned their traditional isolationism, drew near to their ancient enemy France, and eventually signed an alliance with Russia.

Having encircled themselves, the Kaiser and his advisers seized upon the crisis stirred up by the assassination of the Archduke Ferdinand in Sarajevo as an opportunity to drive a wedge between England, Russia, and France, taking "a calculated risk" that ended in a general war. If Bismarck's story is a tale of a difficult situation magnificently handled, the history of Wilhelmine Germany is a case study in what not to do.

Kagan juxtaposes the Peloponnesian War with World War I because, in each case, there were two opposed alliance systems, and one of the hegemonic powers found itself drawn into a conflict of intrinsic interest only to its chief ally. He juxtaposes the Second Punic War with World War II for comparable reasons. In each case, the war involved powers which had fought before, and one side had been victorious and had imposed a peace. In studying these last two examples, one can ponder what it is that makes a good postwar settlement and what is required to enforce or maintain the peace.

IT SHOULD HAVE BEEN EASY FOR ROME TO forge a lasting settlement in the wake of the First Punic War. Once Rome achieved full control of the sea, Carthage was helpless. Rome could have destroyed its rival. But the Romans were reluctant to govern an empire, and so they sought to turn Carthage into a client state. In the Peace of Lutatius, they defined for the powers two separate spheres, taking Sicily and the nearby islands for themselves and leaving Carthage with Sardinia and the Maghreb. In principle, this might have worked—but Carthage had been a great power long before Rome was worthy of notice, and it is by no means clear that it would have been satisfied with second-class status. In any case, when the Carthaginians became embroiled in a conflict in North Africa with their own mercenaries and rebellious mercenaries in Sardinia offered that island to Rome, the Romans hesitated; and when the offer was made a second time after the Carthaginians had put down the rebellion near home, the Romans pounced. After that, what little chance there was that the Carthaginians would ever trust the Romans and accept the hand that fate had recently dealt them disappeared.

While contemporary readers will not be surprised by the notion "that fear and interest move states to war," Kagan writes, it may seem strange to them that a "concern for honor should do so."

Even then, Kagan insists, the peace might have been kept. The Romans might have attempted appeasement and they might have prevented the Carthaginians from establishing an empire in Spain. They did neither. Kagan's tale of what they did instead is a story of gross ineptitude.

Something of the sort can be said concerning the origins of World War II. Given what the victorious allies had suffered in the course of a war fought for the most part on French and Belgian soil, and given what they had learned concerning Germany's intentions from the terms imposed on the Soviet Union in the Treaty of Brest-Litovsk, one can hardly blame them for being wary of the prospect that Germany might emerge from the war as a power dominant on the continent of Europe. If the peace imposed on Germany was a Carthaginian Peace, as is sometimes said, it was not because the Versailles settlement was needlessly harsh but rather because it was not harsh enough. At the end of World War I, German industry was intact; the German economy had far better prospects for a quick recovery than the economies of her rivals. The peace imposed on Germany was bound to inspire resentment. It applied the principle of national self-determination to all but Germans, and it held the Central Powers responsible for the war. But the real problem was that, having added insult to injury, it left the aggrieved with the wherewithal to press hard for a general revision of the settlement in their favor. The Versailles settlement was not a peace that would enforce itself.

That would not have been fatal had the Allies been willing to enforce the peace themselves. The French were willing, but they could not—or at least would not—do so alone. At Versailles, the French had pressed for the dismemberment of Germany. They had been persuaded to give way on the expectation that they would be awarded a defensive alliance with the United States and Britain. But when Woodrow Wilson failed to make good on his promises, Britain exercised its right to forgo the alliance, and France was left to her own devices.

In fact, after the peace was signed, neither the Americans nor the British were comfortable with the results. Wilson's pious hopes for collective security and his contempt for balance-of-power politics caught on, especially in the United Kingdom. Under the influence of those notions, the British set out to appease the Germans and bring them within the League of Nations—and the French, after a brief attempt to go it alone, followed their lead. In the 1930s, Stanley Baldwin and Neville Chamberlain merely pursued

to its logical conclusion the appeasement policy adopted the decade before.

Twenty years ago, Kagan's course tended to end on a note of triumph. Where Pericles and other statesmen had failed, John F. Kennedy had succeeded. The events of October 1962 were a diplomatic crisis well handled: It did not end in war. That was, of course, the impression left by the memoirs published by those inside the Kennedy administration. The release of hitherto classified data has altered the picture, and Kagan is no longer inclined to congratulate the Americans on their statesmanship. Kennedy emerges in this account as a man much more like Neville Chamberlain than Winston Churchill. He had, to be sure, a proclivity for extreme rhetoric, but that rhetoric was rarely, if ever, backed up by action.

In the 1960 election campaign, Kennedy publicly called for an invasion of Cuba by the Cuban exiles. Then he allowed it to fail. On Laos, where Eisenhower had been tough, he accepted a settlement unfavorable to the United States. At the Vienna Summit, he allowed Nikita Khrushchev to browbeat him. He did nothing to prevent the building of the Berlin Wall and may have encouraged Sen. J. William Fulbright, chairman of the Senate Foreign Relations Committee, to float the idea that the Soviets would be perfectly justified in closing the border and cutting off East German emigration to the West. When, in panic, Kennedy announced that America would not hesitate to launch a first strike if the Soviets invaded Western Europe, Khrushchev figured that it was worth the risk to try to put an end to America's nuclear superiority by shipping to Cuba middle-range and intermediate-range ballistic missiles bearing nuclear weapons. Even if the Americans discovered the missiles before they were operational, the Soviet leader appears to have reasoned, Kennedy lacked the courage to do anything to prevent them from being readied.

Kagan's account suggests that Khrushchev was right in his estimation of Kennedy. The deliberations of Ex Comm, the body that Kennedy set up to weigh America's options, were taped on Kennedy's orders. The transcripts are now available, and they demonstrate that neither Robert McNamara nor John F. Kennedy had any appreciation of the strategic consequences of allowing the missiles to stay in place. Both could think only of the elections that would take place in a few weeks. They evidently regretted Kennedy's public commitment, announced in early September, that the United States would not tolerate the introduction to Cuba of missiles with a nuclear payload. Neither appears to have been willing seriously to contemplate an American attack on the missiles' site or an American invasion of the island.

Kagan's judgment can, of course, be questioned. Twenty years ago, I was inclined to think that Pericles was less like Bismarck than like the last pre–World War I German chancellor, Theobald von Bethmann Hollweg, and I still suspect that the embargo against Megara was aimed at dividing Corinth from Sparta and splitting the Peloponnesian League so that Athens could fight an inevitable war on favorable terms. Others may wish to challenge Kagan's assessment of Bismarck or Kaiser Wilhelm II; of Roman statesmanship between the First and Second Punic Wars; of the Versailles Treaty; of Stanley Baldwin, Neville Chamberlain, and Winston Churchill; of John Kennedy and Nikita Khrushchev. But none of this detracts from the value of this book, for its purpose is less to tell one what to think than to make one do so. Even if Kagan is wrong on a given question, he has much to teach us concerning the questions that we must repeatedly ask—and, as anyone in the business of strategic management can testify, posing the right questions is where political prudence begins. ®

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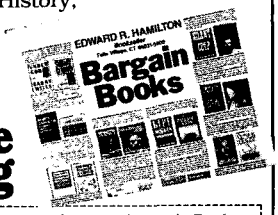

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Let It Burn

By Thomas W. Hazlett

Back to the future on flags

THE VERY FIRST "SELECTED SKIRMISHES" column ever appearing in this fine journal of opinion was titled "The Last Temptation for Censorship" (October 1989). While the median REASON reader surely remembers that stellar piece of literary penmanship, and more than a few of you have likely downloaded a copy to re-read in recent days, the main topic was President George Bush's maniacal pre-occupation with passage of a federal flag-burning statute.

The tagline for that column announced that I would begin a monthly column on the back page of REASON. And so I have. It's been a bit of work, juggling writing chores with my day job, but I figured: Just hang onto the column long enough to cover each of the recurring themes of Modern Life...and then recycle. Like the TV shows: A few years on the network and presto! Syndication reruns.

I am today delighted to see my vision working precisely as planned, as we hurtle back to the future of that burning issue: federal sanctions for Old Glory immolators. The idiotic campaign has now played out in technicolor. President Bush, desperate to latch on to a commitment, shamefully bullied Congress into making flag burning a federal crime. Mr. Bush, so courageous in standing up to flag burners, mano a mano, was soon to disintegrate like a Mike Tyson sparring partner when the Democratic congressional leadership told him the time had come to abandon his "no new taxes" pledge.

As a strategy in the war of ideas, it is supremely clever to permit flag burning. Those *Mother Jones* subscribers who are tricked into lighting up demonstrate the greatness of The American Way with sparkle and flash. That a document written 200-plus years previous could constrain some macho police chief hepped up on press releases from prosecuting some hapless ne'er-do-wells for attempting to make a political point says volumes about the beautiful place we call America. Isn't it nice to know that people, no matter how odious or sophomoric, have rights to express themselves which trump those of the police? The legislature? The politicians?

Conservatives, rappelling down Constitution Mountain on a stake driven by Robert Bork, say they aren't regulating speech by outlawing flag burning, just conduct. This is an argument so silly I'll bet the political science majors at Liberty University are giggling about it. The act of burning red, white, and blue cotton fabric will not be a crime—unless it is so configured in a pattern denoting the U.S. flag. Just action, not speech? Tee-hee, tee-hee, tee-hee.

NO REPUBLICAN SPONSOR HAS, IN FACT, offered up the Cloth Burning Amendment to the Bill of Rights (although some liberal Democrats are said to be talking with environmental groups to see if such a law might be enacted and broadly expanded to encompass all industrial combustion). Republicans seem concerned that, having dealt with substantive issues through their Contract and the effort to produce a balanced budget, they now face a pandering deficit with the Democratic Party. The flag-burning amendment would be a huge step forward on this score, nullifying precious freedoms on behalf of a narrow constituency of activist whiners.

That the conservatives can put such an amendment forward without a smirk, however, is testimony to their dedication to the cause. From whom have we heard for five years about political correctness? These weekend warriors on civil liberties have posed as friends of open and robust debate—but torch a patriotic icon and we'll incarcerate you, even if we have to overturn James Madison to do it.

The political urge to censor can overpower principle, as the tawdry congressional action this year to prosecute computer network providers for Internet porn also shows. The proposed law is the cyberspace equivalent of jailing traffic cops for allowing (unindicted) criminals to drive through town. But, as telecommunications policy expert Henry Geller said, "Who is going to vote *for* indecency?" Others noted that many senators backed the measure confident that the courts would overrule it.

That's what the Congress did last time on flag burning. Struck down by the Supreme Court, a new flag-burning law was enacted by Congress to again be struck down by the Supreme Court. (Hey, this legislator gig is pretty fun work, if you can get it.) That's why we now need to substantially redefine the First Amendment to the U.S. Constitution, which assumed that a blanket prohibition against Congress regulating any speech was necessary to keep opportunistic politicians quartered, off to the side of controversial debates which they would inevitably try to rig in favor of their own (short-sighted) interests.

The pseudo-sophisticated arguments of the William Bennetts—that they are enforcing a measure of respect for our civic icons—reveals a fundamental hostility to the most civilized of all our American treasures: the Bill of Rights. Like the flag burner who proves the reverse of what he wishes by simply striking a match, the conservatives veto the magic of America by striking an ugly constitutional pose. ®

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California at Davis.

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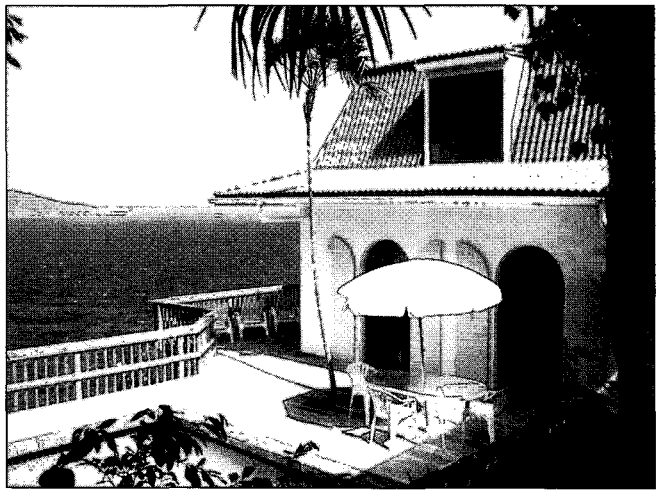

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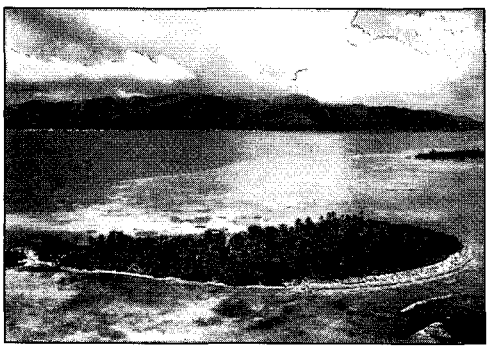

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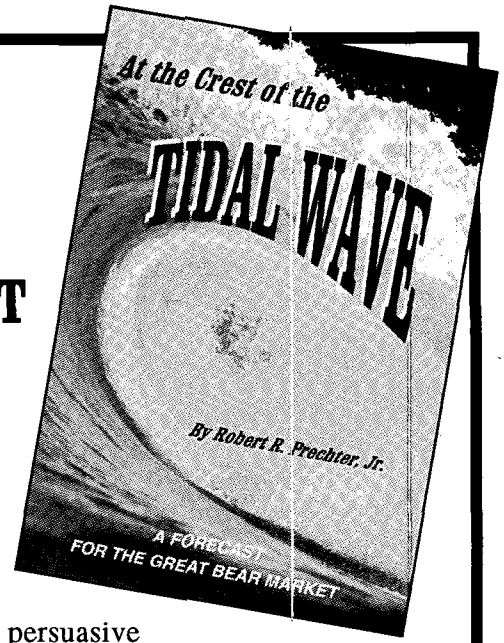

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